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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

In re, Joyce L. Acomb and Charles B. Acomb

JOYCE L. ACOMB and
CHARLES B. ACOMB,

Petitioners,

-against

UNITED STATES OF AMERICA,

Respondents.

On Petition For An Extraordinary Writ

Joyce L. Acomb, Pro Se
8317 StateRt.63N.
Dansville, New York14437
Tel: 716) 335-6804

Charles B. Acomb, Pro Se
8317 State Rt. 63 N.
Dansville, NY 14437

QUESTIONS PRESENTED

1. Should the government be assessed damages when Federal Judge Michael A. Telesca and his clerk, reftised to give Joyce L. Acomb a transcript of her civil trial, for over three(3) years? Page 8, paragraph 9.

2. Should the government be assessed damages because the Acombs' Motion To Amend that was filed and stamped in Buffalo, New York, District Court, on December 8, 1997, under District Court Judge John T. curtin's watch, disappeared? We discovered it missing from the "Index To Record On Appeal", that the District Court sent to the court of Appeals. See pages 29 - 30. These motions should appear on the docket between items 50 and 51. See APP 53, 54.

3. Should the government be assessed damages because the Acombs' Motion To Amend, which was filed and stamped in Rochester, New York, District Court, on December 11, 1997 under District Court Judge Michael A. Telesca's watch, disappeared. We discovered it missing from the "Index To Record On Appeal" that the district court sent to the Court of Appeals. See pages 29 - 30. These motions should appear between items 50 and 51. See APP 53, 54.

4. Should the government be assessed damages for allowing, their employee, Supervisor William E. Humphrey, to threaten Joyce L. Acomb by saying, "I will liquidate you if you pay your CCC note to ASC S"? Page 3, paragraph 1.

5. Should the government be assessed damages for starting a foreclosure proceeding which violated a Federal Court Order signed by Judge Bruce M. VanSickle, in Bismarck, North Dakota? Page 4, paragraph 3.

6. Should the government be assessed damages for bringing Joyce L. Acomb to court on a criminal charge when Farmers

Home Administration (FmHA) knew that she was just paying farm expense bills? Page 5, paragraph 4.

7. Should the government be assessed damages for allowing their U.S. Attorney, Christopher Taffe, to keep sending threatening letters to Joyce L. Acomb and her attorney? Page 6, paragraph *5*.

8. Should the government be assessed damages for allowing U.S. Attorney Christopher Taffe, to attempt to get Joyce L. Acomb to plead guilty to a felony before a civil trial starts in Judge Michael A. Telesca's court?

9. Should the government be assessed damages for allowing U.S. Attorney Christopher Taffe, to threaten Joyce L. Acomb again after Federal Magistrate Fisher dismissed the felony complaint against her? Page 7, paragraph 7.

10. Should the government be assessed damages when their employee, LaVerne Ausman, makes perjured statements to Senator Daniel P. Moynihan? Page 7, paragraph 8.

11. Should the government be assessed damages for ignoring advice of a government contractor, Mose Garippa, whom the government solicited for advice? Page 11, paragraph 13.

12. Should the government be assessed damages for concealing the fact that FmHA knew that Joyce L. Acomb was just paying her bills, and very little to herself, by way of Federal Investigation Records? Page 10, paragraph 14.

PARTIES TO THE PROCEEDING

Joyce L. Acomb and

Charles B. Acomb..... Petitioners

United States of America..... Respondents

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PETITION FOR EXTRAORDINARY WRIT MANDAMUS AND PROHIBITION

Petition to the United States Supreme Court to review Judicial Misconduct by two (2) Federal Judges, government lawyers and employees. Also, two tainted decisions by lower courts.

OPINIONS BELOW

The opinion of the United States District Court, Western District of New York, found at (App., pp. 1-25) is unpublished. The opinion of the United States Court of Appeals for the Second Circuit found at (App., pp. 26-32) is unpublished.

JURISDICTION

This court has jurisdiction under 28 U. S. C., Section 1330. Also, 28 U.S.C. Sec. 1651(a).

TYPE OF RELIEF BEING SOUGHT

We pray that this Honorable Court will reverse the decision made by the District Court and Court of Appeals, to grant the government's motion for Summary Judgment and Dismissal of the Acombs Counterclaims and Third Party Complaint. Also, to assess monetary sanctions against the government for each Civil Rights violation, and Contempt of Court violation, in favor of the Acombs.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

United States Constitution, Amendment VII:
United States Constitution, Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights, 42 U.S.C. Section 1983:

In determining whether a government official is entitled to qualified immunity from liability in Civil Rights action, relevant inquiry in whether reasonable government official could have believed that his conduct was lawful, in light of clearly established law and information he or she possessed.

Rule 10 of the Supreme Court of the United States says:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so flu departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

STATEMENT OF THE CASE

The facts in this case are uncomplicated and in many instances, undisputed. Petitioners are representatives of American Agriculture, and the respondents are the United States of America representing the Farmers Home Administration which is now identified as the Farm Service Agency, or FSA. In 1978, we were granted a loan from the FmHA to expand our

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building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach our first goal of 3,000 finished animals marketed per year. Example: We sold approximately 1,569 market hogs in 1980 for $148,139.00 Finally, in 1984 we sold 3,200 animals. The following acts and actions by government officials made it impossible for the Acomb farm to be successful. we will show that it was the intent of Congress to give American farmers a number of areas of relief, specifically, 7 U.S.C. 1981A, an act of Congress passed into law in 1978. This problem was finally consummated in 1988 through Coleman v. Block, but by this time it was to late. Farmers need operating loans every year, and the government stopped supporting us in 1984.

1. In 1980 and 1981, in addition to the FmHA loans, Joyce L. Acomb received Farm Storage loans from the Commodity Credit Corporation (CCC). The 1980 loan was being paid off through monthly payments that was agreed on between the two parties. In 1981, the same procedure was followed. Mr. William E. Humphrey, the FmHA Livingston County Supervisor in 1981, would not allow the 1981 CCC note to be paid. Mr. Humphrey also told Joyce L. Acomb, that if she did complete the CCC payments, he would liquidate her. Mr. Hauryski, the CCC supervisor, was informed of Mr. Humphrey's threat, and he told Joyce Acomb he would have to sue her. Joyce Acomb reported this conversation back to Mr. Humphrey who said, "So what, let him sue". Years later we found out that an FmHA official, Mr. Paul Dendis, had suggested that FmHA pay CCC a pro-rated share of payments from the sale of hogs. We also found out years later that there was a Memorandum of Understanding between the two agencies. Mr. Humphrey's threat, "I will liquidate you", was a threat of a non-judicial foreclosure, which would be illegal. All of the FmHA officials knew of the Memorandum of Understanding. This constituted a breach of Fiduciary Duty. The Agency did not share their knowledge with the farmers that there was a "Memorandum of Understanding". This was fraudulent concealment.

2. On December 3, 1984, the Agricultural Stabilization and Conservation Service (ASCS) started a civil suit against Joyce L. Acomb to collect monies that Mr.Humphrey refused to allow her to pay.

3. In the early months of 1985, Joyce L. Acomb was turned down in regard to an operating loan by Mr. Humphrey, the Livingston County Supervisor. She began the appeal immediately. On June 2, 1985, Joyce received a letter dated May 31, 1985 from William E. Humphrey stating:

> "This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.
>
> The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts."

Mr. Humphrey was in violation of rules in the Code of Federal Regulations. Failure to give proper notice, which was a violation of due process, and but not least, a violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota. On the last page of this court Order, Judge VanSickle states:

> It is further ordered that defendants John R Block and Charles Shuman shall give notice to their agents, subordinates, and employees who are charged with implementing FmHA loans, of the contents of this order.

Sometime in 1994, we became aware of a memo by William E. Humphrey, that he had discussed this letter with Office of General Counsel (O.G.C.), Charles Volsing and Chief of Farm Programs (C.F.P.) Paul Dendis. They approved of this letter even though they discussed the Coleman Decision. All three officials agreed to be contemptuous of the Court Order.

The FmHA officials were aware of the Federal Court Order, and they refused to share this knowledge with Joyce L. Acomb. This is fraudulent concealment. At least three FmHA officials agreed to violate a Court Order. This is fraud and conspiracy. On information and belief, no other FmHA borrower received a letter demanding all of the proceeds. This is blatant discrimination because Joyce L. Acomb is a woman. It is also a violation of Equal Protection of the Laws.

4. Sometime in October 1988, Joyce L. Acomb was served a summons m a criminal case. She had to appear in Rochester, NY in front of US Magistrate, Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

The following day, October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating:

> DANSVILLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL
>
> A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.
>
> Joyce Acomb of 8317 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov.11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.
>
> Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law

prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about *$524,000.* Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October1987.

5. Joyce received a threatening letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury.

On August 31, 1990, Joyce received another threatening letter from Assistant US Attorney, Christopher Taffe.

6. On information and belief, sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, NY. there was to be a pre-trial conference on September, 17, 1990. Charles B. and Joyce L. Acomb arrived with Joyce's lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's courtroom and waited. Soon Assistant US Attorney, Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyer, William Muoio, came out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Acomb very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest. The trial began on 9/18/90 and a decision was recorded on September *25,* 1990, stated as follows: IT IS

ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint is dismissed

7. Joyce received a letter dated October 4, 1990, from her lawyer and he stated:

> Dear Joyce:
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Then the government submits a Voluntary Dismissal, on file in the US Court of Appeals.

8. On or about March 4, 1991, Charles B. and Joyce L. Acomb, appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan. Dear Mr. Acomb: I sent your inquiry to the appropriate Executive Agency and they have produced the enclosed response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator. ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security. Because this case is before the Court, we cannot comment on it at this time. We hope you find this information helpful in responding to your constituent. Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home

Administration, Washington, DC. The information given to a United States Senator was false, and was perjury. All of the decisions by the governmental employees were causing extreme emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

9. In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb's face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca's Court on February 20, 1992, asking for a complete trial transcript of case #CIV-84-1389T, United States V. Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that much. Laughed and said, "You will be able to see what Judge Telesca says". Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in 1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have *$550* before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995.

The Acombs' have telephone records showing that they had tried to consummate an agreement with a member of Judge

Telesca' s Court in regard to preparing a complete record for Case No. CIV-84-1389T.

We take the position that there has been fraud and conspiracy, malfeasance, nonfeasance, obstruction of justice, discrimination, and that their misconduct created severe emotional distress and a denial of due process. This is also fraudulent concealment.

10. Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bivens Action", we were supposed to be able to present evidence. This was a denial of due process and equal protection of the law.

11. It is a fact that in 1983 there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was 3637. That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the government agents that worked against her, her farm could have produced over 5,000 animals by 1987. In 1986, 36 farrowing stalls were added on the Florence J. Carney farm.

12. On 01-27-89, William E. Humphrey refused again to sign any papers that would allow Charles B. Acomb and Joyce L. Acomb any relief. He also claimed we diverted large amounts of money to our own use, which was and is a false statement.

13. While inspecting our case file in the US Attorney's Office in 1997, we discovered a document, a letter addressed to Mr. Humphrey by Moses Garippa, a government contractor. It is dated July 14, 1986. It seems that the Federal Government, through Mr. Humphrey, contracted Mr. Garippa to make an independent analysis of the Acomb Farm and it's potential. The last paragraph is as follows:

> "This farm was successful and profitable in the past, and with proper management and timely decisions, surely can be successful again." Signed by Moses Garippa.

This document was available to all of the FmHA agents, and they chose to ignore it. We did not have knowledge of this for years. Thus, this is fraudulent concealment, conspiracy etc.

14. We discovered a letter by Christopher V. Taffe, dated October 3, 1991, sent to a government investigator, in regard to charges of conversion. We read this for the first time in the US Attorney's Office in Rochester, NY, in 1997. US Attorney Christopher V. Taffe, is telling the investigator that they have no case against Joyce L. Acomb. Both of these men knew that all of the hog checks and monies were put into the one and only farm checking account. Attorney Taffe states:

> "There is very little indication that the Acombs benefited financially from this conversion, other than allowing the business to continue."

15. On 11/21/88, there was a memo to Mr. Humphrey from Nancy Neu which reads:

> From Nancy Neu- as per Dave Spader's instructions, do not send Joyce Acomb the former letter, Ex A. etc.
>
> W.E.H. 11/23/88.

16. Nancy Neu, Farmers Home Administration Program Division Director, is authoring a summary to the Independent Review Team in Washington, DC, dated at the top 2/19/97. She states:

> "The Acombs have indicated in letters prior to their pro-se lawsuit and in their pro-se lawsuit that their civil rights were violated, that there

was fraud by the agency and that there was discrimination These issues were all dismissed with the lawsuit and upheld by the Appeals Court. After a warning, sanctions were imposed in favor of the government.

The fact is, that in that pro-se lawsuit the Acombs trusted Mr. Elliot in regard to any of the legal papers that were filed. We found out later that Judge Larimer was correct in that the complaint asserted no individual fact and dates concerning various violations.

Later in the summary, Nancy Neu is alluding to a criminal indictment against Joyce L. Acomb. This is a totally discriminatory statement and misleading to the Independent Review Team.

17. William E. Humphrey and other agents, failed on many occasions to implement, or to point out to the Acombs numerous Code of Federal Regulations that would have given them a deferral. They are as follows: CFR Rule 1924.51, 1924.55, 1924.56, 1924.57 (b)(1), 1941.3, 1951.313 (A) (2), 1951.40 (b) (2), 1951.33 (a) (2), 1951.33 (a) (3), 1951.40 (a) (1), and 7 USC 1981A. This was fraudulent concealment, discrimination, breach of fiduciary duty etc.

18. Joyce L. Acomb had requested to review her file by letter to Andrew T. Muscarella, County Supervisor, on March 15, 1991. He answered on March 20, 1991 and stated that it had been forwarded to the Freedom of Information Officer in our State Office, Syracuse, NY. He then stated I would have to pay copy costs which could be $200 -$300. We received an answer from State Director, Pierre L. LaBourdette, dated June 26, 1991. He states, "We have reviewed your request and have determined this material should not be released to you at this time. This decision is based on 5U.S.C. 552a (D) (5).

We then replied by letter dated July 8, 1991, notifying the director that we were appealing the state decision. We received a letter from Joanne Shaw, Assistant Freedom of Information Officer, dated August 9, 1991. She states they have to evaluate reasons we were turned down by state office. It is our position that any denial at all is discrimination and fraudulent concealment. Sometime later they allowed us to review part of the file. They charged us for each copy even though the charge is a violation of FmHA Instruction 2015-E.

19. On information and belief; the C.F.R. Regulation, or directions as to how to file a Torte Claims Act, was removed from the C.F.R in 1984. FmHA stated that the intended effect was simply to remove an unneeded regulation from the C.F.R. This was, and is, fraudulent concealment.

20. On November 24, 1997, District Court Judge, the Honorable John T. Curtin, signed an Order that states:

> Pending is defendants motion to amend the Answer(item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

Charles B. Acomb filed a Motion For Amendment in Buffalo, New York, District Court on December 8, 1997. He got a personal copy stamped and also mailed a copy to Jane B. Wolfe, Esq., Assistant US Attorney. Personal copy was stamped on the back.

Charles B. Acomb filed a second Motion For Amendment in Rochester, New York District Court, on December 11, 1997. He got a personal copy stamped on the front. He also mailed a copy of the second filed motion to Jane B. Wolfe, Esq., Assistant US Attorney.

> This is Judge Curtin's final Order:
> Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the court. Thus, the information therein will not be considered in reaching a decision on the pending motions. See Fed.R.Civ.P.15(a) (1999).

Upon reading this Final Order, we suspected something was wrong. We received a copy of the docket after we began our appeal in the Second Circuit, and Joyce Acomb discovered these two motions that were filed personally, did not appear on the docket.

On page 8 of the District Court's Decision and Order, Judge Curtin states:

> Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the Court. Thus, the information therein will not be considered in reaching a decision on the pending motion. See Fed.R.Civ.P. 15(a) (1999).

REASONS FOR GRANTING THE PETITION

This petition arises from an extraordinary judicial usurpation of the role reserved to the jury by the Seventh Amendment to the Constitution. Both the District Court and Court of Appeals insist on substituting their weighing of the facts over that of a jury. Both courts have refused to allow the petitioners any oportunity to present evidence, or to serve defendants named in our counterclaims.

We had alerted the Court of Appeals as to the disappearance of two motions to amend our Answer and Counterclaim, through a motion for a Stay of The Proceedings.

This motion was ignored. Thus, an abuse of discretion. This court's supervisory power will aid in the court's appellate jurisdiction. This is the only court that can exercise adequate relief to discipline this type of behavior

I. THE LOWER COURT'S HOLDING THAT PETITIONER HAS PRESENTED NO GENUINE ISSUE OF MATERIAL FACT IS IN CONFLICT WITH EVEN THE DECISIONS OF THE SECOND CIRCUIT, AS WELL AS OTHER CIRCUITS

GENUINE ISSUE OF MATERIAL FACT

In 1978, the Acombs entered into a contract with the Farmers Home Administration to improve and expand the building program that was designed to maintain a swine production enterprise, "farrow to finish". It would take some time to reach our initial goal of 3,000 finished hogs per year. Later, in 1985, we increased our goal to 5,000 to 6,000 animals per year, selling both finished hogs at *235#* and feeder pigs at 40# to *50#*. The Farmers Home Administration is a creation of the U.S. Congress, with a history and intent to provide financial assistance to small farm operators. The scope and development of the programs reflect a recognition by the government, and in particular Congress, that a strong and stable farm economy is vital to the welfare of the nation. It was originally created to help farm families retain their land despite drought or depression. The acts and actions of people administering the FmHA programs are guided by the Code of Federal Regulations found generally at 7 C.F.R. Sec. 1804.61 to *2045.1756* (1983). Thus, the Acombs had every reason to believe that this contract was entered into with confidence and trust. It is a fact that each and every FmHA official is bound by these regulations.

> The United States of America is not entitled to Summary Judgment because there exists Factual Issues as to whether the United States, and or, the Farmers Home Administration made it impossible to pay the debt or whether the FmHA is Estopped from collecting the debt for reasons of Equity.

Rule 56 (c) of the Federal Rules of Civil Procedure provides that Summary Judgment shall be granted only if the evidence submitted establishes:

> "That there is no genuine issue as to any material flict and that the moving party is entitled to a judgment as a matter of law."

It is well established that the moving party has the burden of showing the absence of a genuine issue as to any material facts, and thus, all materials submitted to the Court must be received in the light most 1~vorable to the opposing party. Adickes v. S.H. Kress & company, 398 U.S. 157, 158, 90 5. Ct. 1598, 1608-1609 (1970), also Sutera v. Schering Corp, 73 F.3d 13 (2d Cir. 1995). In this case it is mentioned under *standard of review*, page 15.

We review the District Courts grant of Summary Judgment de novo. Gallien v. Connecticut Gen.. Life Ins. Co., 49 F.3d 878, 881 (2d Cir. 1995). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. *56(c);* see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2509, 91 L.Ed.2d 202 (1986). In deciding a motion for summary judgment, "the court cannot try issues of fact but can

only determine whether there are issues of fact to be tried." Katz v. Goodyear Tire and Rubber Co., 737 F.2d 238, 244 (2d Cir. 1984) (internal quotation marks omitted). The district court must draw all reasonable inferences and resolve all ambiguities in favor of the nonmoving party and grant summary judgment only if no reasonable trier of fact could find in favor of the nonmoving party, Taggart v Time Inc., 924 F.2d 43, 46 (2d Cir. 1991).

There came a time when Joyce L. Acomb took out a loan against her corn crop with the Commodity Credit Corporation (CCC). Mr. Humphrey refused to let Joyce repay the CCC loan, laughed and said, "So what, let him sue". Later Mr. Humphrey told Joyce if she paid off the CCC loan, he would liquidate her. These are uncontested facts. We found out in 1990 at a civil trial that there was a "Memorandum of Understanding" between the ASCS Office, which CCC is a part of, and FmHA that required cooperation between the two agencies.

A. In 1982 and 1983, the Farm and Home Plan showed that the farm assets exceeded the debt by over $100,0000. There is no C.F.R. Rule that allows this type of dictatorial control. This is malice and threats. See Silver v. Cormier, 529 F.2d 161, (1976). Chief Justice Lewis, states on page 163, paragraph 2:

> Defendant frankly admitted his extreme irritation with plaintiffs and that the making of the threat without retraction was an action of his own. A jury may properly find that such conduct by a public official manifests a reckless indifference to the property rights of others, ill will, a desire to injure or malice.

B. We did not discover that there was a "Memorandum of Understanding" until a trial in 1990. Mr. Humphrey and all of the FmHA Officials knew it was there and did nothing. In the interim, Joyce L. Acomb was stopped from enjoying any

economic advantage with ASCS for 8 years. She bad to hire an attorney and worry what the outcome would be for that same 8 year period. It was fraudulent concealment in regard to the Memorandum of Understanding. See Simcuski v. Spell, at 406 N.Y.S. 2d *259* (1979). Also, there is a Bivins action against all defendants, Bivens v. Six Unknown Agents, 403 U.S. 388, under which it was established that victims of a constitutional violation by a federal official, have a right to recover damages against the official in Federal Court despite the absence of any statute conferring such a right, page 262, below paragraph 2, quote "Fraudulent representation may play a dual role. They may be the basis for an independent action for fraud. They may also, in equity be a basis for an equitable estoppel barring the defendants from invoking the statute of limitations as against a cause of action for breach of fiduciary relations." 3-4 "It is the rule that a defendant may be estopped to plead the Statute of Limitations where plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action." This activity demonstrates how reckless FmHA Agents can be.

Every year Mr. Humphrey, the Livingston County FmHA loan Supervisor, insisted that Joyce sign a "Loan Agreement" that was not an official document. This is another case of fraudulent concealment. Joyce L. Acomb never knew that there is no directive in the C.F.R. that directs any supervisor to control farmers in this manner. See Thorsted v. Kelley at 858 F.2d 571 (9th Cir. 1988), page 574 2nd paragraph.

> The Supreme Court restated the principle that whether a government official may be held personally liable for an allegedly unlawful discretionary act generally turns on the objective legal reasonableness of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken.

Please see EXHIBIT #269. This is an acknowledgment by Joyce L. Acomb that she would like an appointment with the supervisor to talk about a deferral. The supervisor never offered any deferral, and or, management assistance etc. He could have offered C.F.R.1951.41.

> Sec. 1951.41. Special debt set-aside of a portion of the insured loan indebtedness of farmer program borrowers. (c) Definitions. (1) Special debt set-aside used in this section means postponing payment of a portion of a borrowers insured farm loan indebtedness to FmHA, not to exceed 25 percent of the total unpaid principle and interest owed or $200,000., whichever is less, for a period of 5 years at zero percent rate of interest. Set-aside will not be considered for any debt not owed to FmHA on September 18, 1984.

We ask the Court to please take note of the appointment date on the document. It is November 15, 1984. If Joyce had been offered this deferral, there would have been no need ever for the 7 U.S.C. 1981 A relief that was granted through the moratorium of February 17, 1984. They could have continued granting her annual operating loan. Joyce could have purchased 30 boars for breeding purposes.

See EXHIBIT #270. Consent to Payment Agreement. This document allowed complete control over the income belonging to Joyce L. Acomb.

See EXHIBIT #271, letter telling Joyce L. Acomb that FmHA demands all of the proceeds.

The Coleman Injunction

We submitted a Farm and Home Plan to the Livingston County FmHA on or about 01/28/1985. It was rejected in March or

April of 1985. This was a surprise because we had sold over 3,200 animals for approximately $396,134. in 1984, when prices for animals were down and feed supplies were high. As we have stated in our Affirmative Defense and Counterclaim, Joyce L. Acomb received a letter dated May 31, 1985, from FmHA identified as follows:

> Dear Mrs. Acomb:
> This letter will serve notice that FmHA will no longer release hogs, livestock, or crop proceeds to you. The proceeds from the sale of this loan security will henceforth be applied to. your Farmers Home Administration loan accounts.
>
> Sincerely,
> William E. Humphrey

It was, and is, our position that this letter violated the Coleman Injunction and Rules found in the C.F.R. The government states, that is FmHA's position, that it did not violate the Coleman Injunction. (See page 27, line 2.) As of the date of the letter, May 31, 1985, Joyce L. Acomb had not been informed of any liquidation process. The government could not inform her of any liquidation until the appeal process had been completed. The appeal process had just barely begun. The government claims that the injunction of 1984 did not apply to the Acombs case. We disagree. Please read a copy of the Court Order that is found in Coleman v. Block, 580 F. Supp. 194, page 210.

The government claims that a later case, Coleman v. Block, 632 F. Supp. 1005, March 3, 1986, was controlling in the Acomb case. We disagree. Please see bottom of page 1006.

MEMORANDUM AND ORDER
VanSickle, Senior District Judge

On January 24, 1986, this Court granted plaintiffs motion for leave to file a supplemental complaint challenging regulations adopted by Farmers Home Administration (FmHA) on November 1, 1985 and on February 18, 1986 granted their motion

This case was initiated because the government had written new regulations long after the letter of May 31, 1985, to Joyce L. Acomb. We ask the Honorable Court to read this case in it's entirety. It shows that the FmHA insisted on making it as difficult as possible for the farmers. Another fact to be considered, is that C.F.R. Rule 1962.40 is always in force, and that is, the farmers are always entitled to a $600. living expense, no exceptions. On information and belief, no other farmer received a notice like Joyce L. Acomb did, that the government would take all of the proceeds. It is our position that this happened because Joyce is a woman. Thus, continued discrimination and duress.

The Second Circuit seems to be offended in regard to Contempt of Court Orders. See U.S. v. City of Yonkers, 856 F.2d 444. In this case, the Court modified the contempt sanction against the city to provide that the fine shall be $1 million per day on day 15 and $ 1 million per day for every subsequent day of noncompliance. See page 460. Also, International Business Machines Corp. v. United States. In this case, Chief Judge Edeistein, after a hearing entered an opinion, findings and order imposing a contingent, coercive fine of $150,000. per day until I.B.M. complies with his discovery order. Also see, Perfect Fit Industries, Inc. v. Acme Quilting Co. This Court found that defendant had willfully failed to even inform itself of the provisions of the final injunctive order which it knew had been entered. The Court imposed a contingent fine of $5,000. per day. That was sanctioned by the Court of Appeals.

This was conspiracy by William E. Humphrey, Paul Dendis and Charles Volsing. We think that the "continuous doctrine" should prevail. It is also our position that the Agricultural Credit Act, may in some instance be unconstitutional as directed in Coleman v. Lyng, 864 F.2d 604, page 612, paragraph 2. See EXHIBIT #272, a directive in the Coleman Decision.

See EXHIBIT #277. Here we have proof of fraud and conspiracy. Office of General Counsel, Charles Volsing, and Chief of Farmers Programs, Paul Dendis, are advising FmHA supervisor, William E. Humphrey. They are in fact, directing Mr. Humphrey to liquidate the Joyce L. Acomb farm at a time when the farm is producing over 3,000 animals annually. Unfortunately, at this time feed prices are high and pork prices were down in the mid 40's, or about 42 cents per pound. For the FmHA to take all of the money, would in fact violate the contract between Joyce L. Acomb and FmHA. Joyce L. Acomb is a part of a National Class, a FmHA member. This is a 42 U.S.C. Sec. 1985 (3) case. See United Brotherhood of Carpenters v. Scott, 463 U.S. 825 (1983), Griffin v. Breckenridge, 403 U.S. 88, Traggis v. St. Barbara's Greek Orthodox Church~ 851 F.2d 584. Also, Kush v. Rulledge, 460 U.S. 719, and Crowe v. Lucas, 595 F.2d 985.

See EXHIBIT #279. This is a record of 'Loss of Money'. It is irrefutable, and the fraud and conspiracy and contempt of court activities of FmHA agents that caused it. At this time, hog prices were rising, and feed costs were lowering.

See EXHIBIT #282. Copy of Summons in a Criminal Case is, and was, a foundation for false arrest, false imprisonment and malice.

See EXHIBIT #283. This is a copy of FmHA Complaint in the Rochester Democrat & Chronicle. It was based on fraud

and conspiracy, and it was libel. See Guccione v. Hustler Magazin, Inc., 632 F. Supp. 313 (S.D.N.Y. 1986). Libel action was brought against publishing companies. Jury awarded libeled party $1. in compensatory damages, and $1.6 million in punitive damages.

See EXHIBIT #284, threat of Joyce L. Acomb being indicted more malice and fraud.

See EXHIBIT #285. Another threat from U.S. Attorney Taffe. More malice, conspiracy and breach of fiduciary duty. See S & K Sales Co. v. Nike, Inc., 816 F.2d 843 (2d dr. 1987). The Court of Appeals, Oakes, Circuit Judge, held that: (1) evidence supported finding of manufacturers "knowing participation" in representatives breach of his fiduciary duty; (2) verdict of $1,050,000. in compensatory damages was not excessive. Also, McNally v. United States, 483 U.S. 350. Federal mail fraud statute, 18 U.S.C. Sec. 1341.

See EXHIBIT #286. Another threat from U.S. Attorney Taffe. See Davis v. Passman, 442 U.S. 228. Also, University Club v. City of New York, *655* F. Supp. 1323 (S:D.N.Y. 1987) Also, State of N.Y. v. Wolker, at 252 NYS 2d 96.

See EXHIBIT #287, Dismissal of government appeal of CCC Case in Judge Telesca's Court.

See EXHIBIT #288, Contractors recommendation to FmHA that farm can be successful. We discovered this document m 1997.

See EXHIBIT #293, letter by U.S. Attorney Taffe, admitting there was no conversion. He is admitting to fraud and conspiracy. This is also a Bivens case, no immunity.

If Joyce had not been charged, and the FmHA officials had not attempted to force the foreclosure, we would have been

producing 5,000 animals per year. In 1987, the market was approximately 20 cents higher per lb. The market hogs weigh about 235#, $.20 x 235# x 5,000 - $235,000. more than the price received in 1985, which would have been that much less in gross.. Another way of looking at it, 5,000 animals at 45 cents in 1985 - a gross of $528,750. In 1987, the price per lb. was 60 to *65* cents per lb., and or, $728,500. No question, the farm would have had profits of way over $150,000.

26-See EXHIBIT #298, false statement by government administrator to Senator Moynihan. This is more fraud and conspiracy. See Kush v. Rulledge, 460 U. S.. 719 This is mail fraud, libel and slander. This is a Bivens action. See Lawlor v. GallagherPresident's Report, Inc., 394 F. Supp. 721 (1975), see page 726 .[3, 4].

> Under N.Y. law, injury to reputation is the gist of an action for defamation any published communication; spoken or written, of and concerning the plaintiff without lawful justification or privilege, which accuses him of a crime or tends to expose him to public contempt, scorn, obloquy, ridicule, shame or disgrace, or to induce an evil opinion of him in the minds of right thinking persons, or to injure him in his profession, occupation or trade is defamatory.

See EXHIBIT #299. A letter to member of Judge Telesca's Court. See Complaint of December 29, 1997, sixth Affirmative Defense and Counterclaim. See EXHIBIT #300. Second letter to DeMartino. See EXHIBIT #30 1. The reporter took phone calls, admitted receiving first $100. check, admitted receiving second check for $550., lied to Charles B. Acomb several times. He was very nasty to him on one occasion, raisedhis voice. We have a tape of it. He states he wants $550. and we would get the transcript in 10 days. It never happened.

The letter was dated August 7, 1995. By this time Mr.. DeMartino had denied being at the pre-trial conference. This is Judge Telesca's responsibility, and this is outside of his judicial jurisdiction. We were always troubled as to why such an outstanding Federal Judge would deny us this transcript since February 20, 1992. We have found no record as to this happening anytime before this in the Law Library, Hall of Justice, Rochester, NY. This is fraudulent concealment. See Clark v. United States, 481 F. Supp. 1086. Also, Dykes v. Hosemann 743 F.2d 1488 (1984), Judge who acts in clear and complete absence of personal jurisdiction loses his judicial immunity, also Lucarell v. McNair, 453 F.2d 836, states page 838, court states: Sometime ago the sixth circuit stated its views as to the limits of the protection thus afforded. In Manning v. Ketcham. *58* F. 2d 948 (6th Cir. 1932), we indicated the view that a judge loses all immunity when he acts in absence of all jurisdiction. This rule was discussed at some length in the more recent case of Lynch v. Johnson, 420 F. 2d 818. Also, Zarcone v. Perry, at *572* F.2d *52* (1978).

See EXHIBIT #311, copy of Nancy Neu fabrication. Also, see in complaint thirteenth Affirmative Defense. These statements are fraudulent and a violation of the Bivens doctrine. Also, malicious abuse of legal process. See Jennings v. Shuman, *567* F.2d 1213. Also, deliberate indifference.

See EXHIBIT #312. This letter was organized to hide a document that should be part of the Acomb FmHA file. This is fraudulent concealment, conspiracy and a Bivens action.

See EXHIBIT #313. These are two internal memos, with deciphered copies, that we ask the Court to please review.

See EXHIBIT #317. We ask the court to review this complaint. It is now obvious to us that this document has no legal value whatsoever, and no judge can ever associate it with

our current Complaint and Affirmative Defense and Counterclaim. We ask the Court to dismiss the government's claim of Collateral Estoppel and resjudicata.

FmHA failed to give any relief through C.F.R., specifically, 1924.51 .1924.60.

Where affidavits are presented in support of Motion For Summary Judgment, Court may not in effect weigh creditability of affidavits and decide dispute upon the basis of such affidavits.

See Di Donna v. Sachs . 189 N.Y.S. 2d 514, also 437 South Western Reporter, 2d Series 20, also Newgold v. Woodstock Development Corporation .271 N.Y.S. 2d 904.

The disputed issues of material fact are:

1. Whether the FmHA agents actions prevented the Acombs from meeting their financial responsibilities.

2. Whether the FmHA agents had a legal right to start liquidating Joyce Acomb's farm through the letter of May 31, 1985. (See EXHIBIT 4 of Index.)

3. Whether the FmIHA has a duty to implement C.F.R. Regulations before liquidation.

Under New York Law, it is well established that "Where a party is sued for failure to perform as promised, by the plaintiff who prevented his performance, such prevention is a complete excuse for such non-performance." Simpson and Duesbenburg, EncyclopediaNew York Law, VoL 7, Contracts, Sec. 1704.P.300 and cases cited therein including Vandergrift v. Cowles Engineering Co., 161 N.Y. *435* (1900).

It has also been stated that "if the impossibility of performance arises directly or even indirectly from the act of the

promises, it is sufficient excuse for non-performance", 22 N.Y. Jur. 2d Contracts Sec. 364.P.258. See also Patterson v. Meyerhofer, 204 N.Y. 96, 100 (1912).

Applying this principle of law to the case at bar, and viewing the factual disputes in the light most favorable to the plaintiff, it is evident that the FmHA and its agents has prevented defendant from repaying her loan obligation to the FmHA. Indeed, "prevention" is a slightly erroneous term. The FmHA made it impossible to do so because the FmHA would not follow any C.F.R Rules that would help the economic situation. They refused her an operating loan while the farm was producing 3,000 animals annually, and tried to liquidate her during a moratorium on FmHA liquidation's. See Material Facts above. In addition to the impossibility defense, defendants herein assert an equitable estoppel defense.

In Heckler v. Community Health Services of Crawford County, Inc. . _ U.S. 104 S.Ct. 2218 (1984) (hereinafter "Community Health") . the Supreme Court, addressing this doctrine, stated as follows:

"Estoppel is an equitable doctrine invoked to avoid injustice in particular cases. While a hallmark of the doctrine is its flexible application, certain principles are tolerably clear: 'If one person makes a definite misrepresentation of fact to another person having reason to believe that the other will rely upon it and the other in reasonable reliance upon it doesn't act... the first person is not entitled.. (b) to regain property or its value that the other acquired by the act, if the other in reliance upon the misrepresentation and before discovery of the truth has so changed his position that it would be unjust to deprive him of that which he thus acquired.' Restatement (Second) of Torts, Sec.894 (1) (1977)." 104 S.Ct. at 2223.

In applying this principle to the case at bar, the factual misrepresentations by the FmHA is as follows:

a.. The Acombs signed a contract with the belief that they would do everything in their power to support their success.

b. Joyce Acomb took out a loan on her 1981 corn crop and was allowed to pay it back in installments.

c. Joyce Acomb took out another loan in 1982 believing that she could pay it back in installments, but was stopped by FmHA supervisor. See EXHIBIT 1 of Index (U.S.A. v. Joyce Acomb CIV -84-1389T).

d. William E. Humphrey's misrepresentation was not the fact that he forbade defendant from repaying the CCC loan. Rather, his misrepresentation was the fact that in the immediately preceding year he allowed defendant to make monthly CCC loan payments and defendant had every reasonable right to expect that she could continue to do so. This refusal to allow defendant to pay was the basis for the impossibility defense and is an element in the overall estoppel defense. In the government's brief; they completely ignore the primary representations which were that of the CCC. Specifically, the CCC agreed that the defendant could feed the corn to her hogs and repay the loan in monthly installments without regard to how much collateral was presently in the corn bin. The government completely ignores these facts and when inserted constitutes a basis for an estoppel defense.

e. Because of the above misrepresentations, Joyce L. Acomb was sued by the CCC, and had to hire an attorney.

f. Because of misrepresentation, she was denied a 1985 operating loan.

g. Because of misrepresentation, she was falsely arrested.

h. Because of misrepresentation, Joyce was threatened again and again to be indicted.

i. Because of misrepresentation, her health has declined.

It is well established that, on a motion for summary judgment, the role of the Court is issue finding not issue determination. It is respectfully submitted that the fore-going presentation of fact and law presents a plausible defense by defendant. Accordingly, plaintiff's motion for summary judgment should be denied.

II. THE LOWER COURT FAILED TO GIVE PETITIONER THE BENEFIT OF ALL REASONABLE INFERENCES WHICH MAY BE DRAWN FROM THE EVIDENCE

Contrary to the dictates of prior decisions of this Court, both the District Judge and Court of Appeals Judge, failed to give petitioner the benefit of all reasonable inferences which might be made from the evidence addressed at trial, and instead substituted their judgment for that of a jury.

The prior decisions of this Court require that great latitude be given to the jury to draw inferences, and that the possibility of any reasonable inference in support of the petitioner, including several based on some degree of speculation, precludes judgment as a matter of law. Please see Continental Ore Co. v. Union Carbon Corp., 370 U.S. 690, 700(1962); Lander v. Kurn, 327 U.S. *645, 653(1946)*. Thus, it is well established that even where there is no conflict in the evidence, or the moving party's evidence is uncontridicted, judgment as a matter of law is still improper if conflicting inferences may be drawn from that evidence. Federal Insurance Co. v. Summers, 403 F2d 971, 976 (1st. circuit 1968). Where, as here, the Court has "either overlooked or interpreted into insignificance", evidence for the petitioner, a judgment as a matter of law cannot stand. Continental Ore Co., *Supra,* 370 U.S. 700. We pray that this Honorable Court will allow us to present evidence. Please remember Haines v. Kerner, 404 U.S. *549*. In this case, the District Court dismissed against petitioner,

and the Court of Appeals supported the District Court. The Federal Supreme Court reversed and said, "Let them present evidence, let a jury decide the verdict".

Did the District Court in Rochester, New York and Buffalo, New York destroy two (2) separate motions filed by the petitioners? As is mentioned on Appeal page 27 of Court of Appeals Decision, the petitioners filed an Answer on September 30, 1996. See App. page 157. The petitioners flied an Amended Answer on October 24, 1996. See App. page 175. The petitioners moved to amend their answer and counterclaim again on January 21, 1997. See App. page *195.* The District Court denied this motion by Order on November *25,* 1997. See App. page 268. In this Order, Judge Curtin states: "Pending is defendant's motion to Amend The Answer (item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded". Petitioners did renew and filed a motion to Amend on December 8, 1997, in Buffalo, New York District Court. Please see App. page *255.* The clerk in Buffalo acted a bit suspicious, so we filed a second motion to Amend on December 11, 1997, in Rochester, New York. Please see App. page 261. It wasn't until we read the District Court's Decision that we realized something was wrong. In Decision and Order, App. page 9, line 8, Judge Curtin states:

> Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the court. Thus, the information therein will not be considered in reaching a decision on the pending motions. See Fed.R.Civ.P. 1 5(a)(1 999).

At this time, there was only suspicion, but when Joyce read the docket that we received after filing our appeal, we realized these two motions were absent. We had already filed two more Amended Answers and Counterclaims. Please see App. page 203, that was filed on December 29, 1977. Then

please see App. page 231, that was filed on January 27, 1998. Please see again Court of Appeals Summary Order, App . page 28, line 6:

> Since they did not obtain leave of the Court to file the Answers, the District Court did not consider the content of their answers when deciding on the government's motion for Summary Judgment.

We pray that this Honorable Court will investigate the disappearance of these two motions. Please review our motion For Rehearing Out of Time En Banc, which was denied, See App. page 33. Is the government's position in regard to *res judicata* correct? Please review complaint that was filed in 1992, found at App. page 317. This complaint was not litigated, no witnesses, it was just dismissed. This action is not subject to a plea of *res judicata.* Identity of the parties is required for *resjudicata.* Safeco Ins. Co. of America v. Palermo., 436 So 2d 536 (LA 1983). The second proceeding lacked identity of subject matter, as well as identity of parties. Dornak v. Lafayette General Hospital, 399 So 2d 168.

CONCLUSION

The petition to investigate misconduct of government employees and Federal Judges, should be granted.

DATED: October 17, 2001
Dansville, New York

Respectfully submitted,

Joyce L. Acomb
Charles B. Acomb
8317 State Rte. 63 N.
Dansville, New York14437
Tel: (716) 335-6804

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United States District Court

Western District of New York

97-C V-0022C (Sc)

UNITED STATES OF AMERICA,

Plaintiff

-vs-

JOYCE L. ACOMB and CHARLES BRUCE ACOMB,

Defendants.

DECISION

and

ORDER

CURTIN, District Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

JOYCE L. ACOMB and
CHARLES BRUCE ACOMB,
Defendants.

97-CV-00220(Sc)

APPEARANCES:

DENISE E. O'DONNELL, ESQ., UNITED STATES ATTORNEY
(JANE B. WOLFE, ESO., Assistant United States Attorney, of Counsel), Buffalo, New York, for Plaintiff.

DEFENDANTS PRO SE.

INTRODUCTION

Before the court is plaintiffs motion for summary judgment and dismissal of defendants' counterclaims and third-party

complaint. Item 51. Plaintiff also moves to strike defendants' amended answers (Items 54 and 55). Item 62. Defendants oppose and have filed their own motion to dismiss for failure to prosecute (Item 61), as well as a motion to file another amended answer. Item 67. For the reasons stated below, plaintiffs motion for summary judgment is granted, and defendants' counterclaims and third-party complaint are dismissed. As such, the remaining motions are moot.

BACKGROUND

I. Facts

In this action, plaintiff United States of America, acting through the Farmers Home Administration, is seeking to foreclose four real property mortgages on defendants' property. Additionally, plaintiff seeks to secure a security interest in the defendants' farm equipment.

Some general background is necessary to properly understand the context in which this case has come before this court. Defendants Joyce Acomb and her husband, Charles Bruce Acomb, currently occupy a farm located on Route 63, R.D. #1, in Dansville, New York. It is uncontested that in 1978, defendants embarked upon a plan to expand theirfarm into a hog enterprise. Item 58, ¶ 3. To fund this project, Mr. and Mrs. Acomb jointly obtained farm operation loans in the amounts of $40,000.00, $100,000.00, $206,400.00, and $60,000.00 from the Farm Service Agency, formerly known as Farmers Home Administration ("FmHA'). Item 78. Each loan was evidenced by a promissory note, executed and delivered to FmHA by the Acombs, and secured by a real property mortgage covering the farm. Item 1.

In 1980, Mr. Acomb transferred all of his interest in the farm to Ms. Acomb. After the transfer of property, defendant Joyce Acomb executed and delivered three additional real property mortgages on the farm to FmHA as security for loans in the amounts of $8,500.00, $30,000.00, $ 130,000.001, $166,000.00, and $90,000.00. Items *1* and 78. All

---

[1]This loan was rescheduled in the amount of $146,515.93 on May 18, 1982. On C May 27, 1983, the loan was further rescheduled in the amount of $154,229.55. The reschedulings are evidenced by promissory notes with dates and amounts. These

four mortgages were filed in the Livingston County Clerk's Office and provide that the loan amounts will be repaid with interest at specified rates over a specified number of years.[2] Item 78.

In 1984, Ms. Acomb obtained another $100,000.00 loan from FmHA. As security for this loan, Ms. Acomb gave the FmHA a security interest in defendants' then-owned or thereafter-acquired equipment. Item 1. In total, three security agreements were executed and delivered to FmHA. Item 1, ¶ 42, Exhs. T-X; see also Item 77, p. 6.

In addition to borrowing money from FmHA, Ms. Acomb also acquired farm storage loans from Commodity Credit Corporation ("CCC').3 Item 58, 11 ¶ 6-7. Farm storage loans allow farmers to pledge a specified quantity of an eligible commodity to CCC instead of selling it. Item 5, Exh. 15, ¶ 4. In exchange for the pledge, the farmers receive a cash loan. The pledged commodity is stored on the farm and cannot be removed or utilized until the loan is repaid with interest. 7 C.F.R. §§ 1412.18(a), 1421.17(g), 1412.19 (1982). In 1981, Ms. Acomb used her corn crop to secure a CCC loan. Id.

While the hog farm substantially expanded in the early 1980s, the expansion failed to produce a financial profit. Between 1978 and 1981, the number of hogs on the farm doubled, yet defendants struggled to keep current with their FmHA and CCC loan

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notes represent a modification of, but not a replacement or payment of, the prior notes. Additional mortgages were given to secure the rescheduled amounts.

[2]The mortgages cover the land and any structures built thereon, as well as the crops and livestock from the farm. Item 59, Exh. 1, p. 2.

[3]CCC is the financial arm of the Agricultural Stabilization and Conservation Department ("ASCS"), which was the federal agency responsible for administering the farm storage loan program. As noted below, ASCS also administers the farm operation loans offered by the FmHA.

payments. See Item 51, Exh. 5; Item 63, Exh 18. Often defendants had to take out a new loan to pay off a portion of an older loan. For example, in 1981, Ms. Acomb took out a CCC loan for approximately $46,000.00, of which $5,000.00 was used to pay a portion of an earlier FmHA loan. In 1981, Ms. Acomb acquired a loan of approximately $47,000.00 from the CCC. On this occasion, Ms. Acomb used about $17,000.00 to pay off a portion of an earlier CCC loan, and the remaining $30,000.00 was applied to an earlier FmHA loan. See Items 56 and 59.

Even with these payments, Ms. Acomb's FmHA loans were categorized "delinquent" in the fall of 1981. See Item 63, Exh. 18. In January of 1982. defendants financial troubles worsened when CCC discovered that Ms. Acomb was feeding the corn she had pledged as collateral for her 1981 CCC loan to her hogs. Item 43, Exh. 2, p. 4. CCC immediately sent Ms. Acomb a letter ordering her to discontinue this practice until she became current on her CCC loans. Id. Because the hogs had not yet been taken to market, Ms. Acomb lacked the money to do so; however, she still continued to feed the pledged corn to her hogs.

In the weeks that followed, CCC grew more concerned that Ms. Acomb's CCC loans were no longer fully secured, and thus sent her a second letter demanding that she pay the remaining balance on her CCC loan which amounted to $31,787.32. Id. With no savings of her own, Ms. Acomb attempted to use funds from her 1982 FmHA loan to pay off the CCC loan. Item 58, ¶ 7. However, William Humphrey ("Humphrey"), Supervisor of the Livingston County FmHA, refused to release any of Ms. Acomb's FmHA money to CCC. Eventually, Humphrey reversed his earlier decision and allowed a portion of

defendants' FmHA loan to be used to purchase the remaining corn from CCC.[4] In doing so, however, Humphrey required Ms. Acomb to sign a second loan agreement. That agreement prohibited Ms. Acomb from incurring expenses in excess of $1,000.00 without prior written approval of FmHA and required Ms. Acomb to deposit all hog-sale checks from Hatfield Packing Company into an FmHA-supervised bank account. Item 59, Exh. 2; see also Item 51, Exh. 5.

In March of 1985, FmHA denied defendants any further loan services or assistance. According to Humphrey's letter dated March 18, 1 985, defendants 1985 loan application was denied primarily because they owed more than $900,000.00 and had annually borrowed more money than they repaid. Item 51, Exh. 16, Letter 16; see also item 63, Exh 18. Defendants appealed FmHA's decision.

While the appeal was pending, Humphrey consulted Paul Dendis ("Dendis"), another FmHA employee, regarding the status of defendants' account. The two men agreed that the poor status of defendants' account permitted Humphrey to reject defendants' farm plan and apply all hog-sale proceeds to delinquent FmHA loan accounts. Item 51, Exh. 16, Letter 17. Thereafter, Ms. Acomb received a letter dated May 31,1985, in which Humphrey informed her that FmHA will no longer release hog, livestock or crop proceeds to [her]." Item 59, Exh. 4. Instead, '[t]he proceeds from the sale of [the] loan security would be applied to her FmHA loan accounts. Id. To avoid this, Ms. Acomb bypassed the Hatfield Packing Company (her designated market) and sold the hogs in alternative markets. Item 58, 14. Defendants admit that Ms. Acomb's actions violated

[4]Humphrey did not allow FmHA funds to be used to purchase the corn defendant had already fed to the hogs.

their FmHA loan agreement, but claim that it was necessary to keep the farm in operation. Id.

In October of 1988, when the government learned that Ms. Acomb had sold the hogs she pledged as collateral, she was charged with unauthorized sales and conversion of property pledged as collateral for farm loans, a criminal violation under 18 U.S.C. § 658. item 59, Exh. 8. As a result, Ms. Acomb was served with a summons to answer a felony complaint, and she was arraigned before United States Magistrate Judge Kenneth R. Fisher and released on a $5,000.00 bond. Subsequently, United States District Judge David G. Larimer dismissed the felony complaint against Ms. Acomb, and the United States Attorney's Office declined to file a criminal indictment in the matter.

Neither defendant has made a payment on their FmHA loans since January 2, 1985. Item 77, p. 5. Defendants have also failed to pay real property taxes; and as such, the FmHA has paid the taxes in order to protect its security interest. Id. As of March 19, 1999, defendants are jointly indebted to the United States in the amount of $997,716.37, with daily interest accruing at approximately $85.19. Ms. Acomb is indebted for an additional $772,481.40, with interest accruing at approximately $89.93 per day. Item 78.

II. Procedural History

In 1987, CCC filed a civil action against Ms. Acomb in United States v. Acomb, 84-CV-1 389. In its complaint, CCC sought repayment for the corn that defendant pledged as collateral for her 1981 loan but then later used as hog feed. As a defense, Ms. Acomb argued that Humphrey had unlawfully required that all new FmHA loan money be paid to current FmHA loans, not to the delinquent CCC loans as Ms. Acomb requested. See Item

59, Exh. 1. United States District Judge Telesca ultimately agreed with Ms. Acomb that Humphrey had created an unauthorized preference for FmHA loans. However, Judge Telesca did not find that HumPhrey's actions interfered with Ms. Acomb's ability to repay her FmHA loans, and thus only the CCC loan debt was discharged. Id.

Based on Judge Telesca's ruling, Ms. Acomb filed a separate civil suit against FmHA, Humphrey, and a number of other federal employees seeking the discharge of her FmHA debt as well as punitive damages. The main issue in that case was whether Humphrey and other FmHA employees violated defendants' constitutional and statutory rights when Ms. Acomb was prevented from distributing her FmHA loan money and hog proceeds to CCC. Judge Larimer dismissed the complaint, finding that it lacked 'any viable cause of action," and "[t]he mere invocation of statutes cannot Overcome" that "fatal flaw." Acomb v. Farmers Home Admin., 92-CV-6300L, Item 51, Exh. 11-B, p. 13.

On May 6, 1996, plaintiff filed an action to foreclose four certain real property mortgages defendants used to secure the FmHA loans which are in default, as well as the enforcement of its security interest in defendants' farm equipment. Item 1 .5 On May 9, 1996, plaintiff filed a notice of pendency against the properties. Item 2.

Defendants filed their answer on September 30, 1996 (Item 25), and then on October 24, 1996, filed another amended answer with affirmative defenses and counterclaims, as of right, pursuant to Rule 15(a) of the Federal Rule of Civil Procedure. Item27. Plaintiff responded to the counterclaims on December 24, 1996. Item 30

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[5] In addition to defendant Joyce Acomb, plaintiffs named parties who have an interest in, or lien upon, the mortgaged premises. Plaintiff has since settled with all other defendants, and only Joyce Acomb remains a defendant.

Defendants thereafter moved to file an amended answer. Item 32. In an order dated November 25, 1997, the court denied that motion. Item 49.

On September16, 1997, defendants filed a motion to serve a third-party complaint. Item 43. Plaintiff filed a motion for summary judgment on December 15, 1997, seeking foreclosure and sale of defendants' property as well as the dismissal of defendants' affirmative defenses, counterclaims, and third-party complaint. Item 51. In addition to filing response papers opposing plaintiffs dispositive motions (Items 56-59), defendants also filed two amended answers. See Items 54 and 55. Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the court. Thus, the information therein will not be considered in reaching a decision on the pending motions. See Fed.R.Civ.P.15(a) (1999).

On August 5,1998, defendants filed a motion to dismiss plaintiffs complaint for failure to prosecute. Item 70. On August 14, 1998, an order was issued stating that plaintiffs motion for summary judgment is considered submitted; and if the motion is granted, the other motions pending in the case will be rendered moot. Item 65. Since the issuance of that order, defendants filed another motion requesting permission to amend their answer. Item 67. As with the other motions pending, the court will reserve judgment on this most recent motion to amend until it has fully considered plaintiffs motion for summary judgment.

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate where a review of the record reveals that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56 (c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242. 251-252(1986). When deciding a motion for summary judgment, courts view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." American Casualty Co. v. Nordic LeasinQ. Inc., 42 F.3d 725, 728 (2d Cir. 1994).

The moving party bears the responsibility of identifying for the court the portions of the record which demonstrate the absence of any material facts. Federal DeDosit Insurance CorD. v. Giammatti, 34 F.3d 51, 54 (2d Cir. 1994) (citing Celotex v. Catrett, 477 U.S. 317, 323 (1986)). Once the moving party has provided sufficient evidence to support a motion for summary judgment, the opposing party must "set forth specific facts showing that there is a genuine issue for trial." Endico Potatoes. Inc.. v. CIT Group Factoring, 67 F.3d 1063. 1066 (2d Cir. 1995) (quoting Fed. R. Civ. P. 56(e)).

If one party is proceeding pro se, their supporting papers are read liberally. interpreting them to raise the strongest arguments they suggest. Burcios v. HoDkins. 14 F.3d 787, 790 (2d Cir. 1994). However, a pro se partys "bald assertion, completely unsupported by evidence" is insufficient to overcome a motion for summary judgment. Carey v. Crescenzi. 923 F.2d 18, 21 (2d Cir. 1991). Here, plaintiff has moved for summary judgment on its claim for foreclosure and sale of defendants' farm and farming equipment. Thus, the issue before this court is whether,

by viewing the facts in the light most favorable to defendants, a factual dispute exists on the record which prevents the court from rendering a judgment in favor of plaintiff as a matter of law.

II. Foreclosure and Sale of the Farming Equipment

Plaintiff sufficiently establishes that it has a perfected security interest in defendants' farm equipment. There is no dispute that FmHA loaned a total of $100,000.00 to Joyce L. Acomb on May 14,1984. Nor is there any dispute that as security for the loan, Ms. Acomb executed and delivered five security agreements to FmHA covering, among other things, defendants' then-owned or thereafter-acquired farm equipment, thus encumbering defendants' interests in the personal property at issue..

Defendants do not raise any defenses as to the validity of the security agreements or their perfection and continuation. Moreover, defendants do not dispute that they are in default with respect to the terms of the loan documents by reason of defendants' failure to make the agreed-upon monthly payments. Item 27, ¶1. Accordingly, no issue of fact exists as to the foreclosure and sale of defendants' personal property in satisfaction of plaintiff's security interest; and therefore, summary judgment is granted.

III. Foreclosure and Sale of the Real Property

It is also undisputed that defendants have failed to timely repay their FmHA loans. In its motion for summary judgment as well as in its initial complaint, plaintiff provides uncontradicted evidence of defendants' indebtedness, their failure to satisfy the debt, and

the right of the United States to seize and sell defendants' property in order to recoup the money borrowed through FmHA. See Items 1, 51, and 78.

Moreover, defendants do not dispute that between 1978 and 1984, either jointly or as individuals, they executed and delivered four mortgages to FmHA as security for loans, thus encumbering their interests in the real property at issue for over $700,000.00. Defendants also do not dispute or call into question the validity of the mortgages, or that the last payment received on the debt was made in January 1985. As such, this foreclosure action is ripe for decision; and in the absence of an affirmative defense or legitimate counterclaim, plaintiff is entitled to summary judgment. See United States v. Warren Brown & Sons Farms, 868 F. Supp. 1129, 1132 (E.D. Ark.1994); Federal Land Bank of St. Louis v. Hoomann, 658 F. Supp. 92, 94-95(E.D. Ark.1987).

A. Affirmative Defenses

Given the sufficiency of evidence submitted by plaintiff, summary judgment is appropriate unless defendants can establish that there is an applicable defense which legitimately absolves them of their obligation to repay their FmHA debt. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (establishing that if the party moving for summary judgment has met its burden, then in order to defeat the motion, the non-moving party must identify evidence sufficiently probative to warrant a reasonable jury verdict in its favor). Reading defendants' response papers in the liberal light afforded to pro se litigants, defendants assert four affirmative defenses.

1. Statute of Limitations

Defendants first argue that the present action is barred by the statute of limitations. it is settled law, however, that "the United States is not bound by a statute of limitations unless Congress has explicitly expressed one." Westnau Land CorD. v. U.S. Small Business Admin., I F.3d 112, 115 (2d Cir.1 993) (citations omitted). In Westnau, the court specifically held that 28 U.S.C. § 2415(c) does not apply to mortgage foreclosure actions by the United States. Further, the court did not even address the question of whether to look to New York law "to fashion an interstitial statute of limitations for foreclosure actions by the government." Id. at 117. "[T]here is no vacuum to fill because the ancient rule that the United States is not subject to a limitations period clearly addresses the issue presented." Id. Defendants' statute of limitations defense fails.

2. Impossibility of Performance

Defendants next argue that "the acts and actions of government officials" made it impossible for them to repay their FmHA debt. Consequently, defendants contend that they do not owe any money to plaintiff. Item 58, ¶ 2. According to defendants, Humphrey conspired with other federal employees to defraud, defame, and ultimately force defendants from the hog-farming business. See Item 56, pp. 5-7, 9-11; Item 69, p. 7. More specifically, defendants argue that by prohibiting Ms. Acomb from using FmHA loan money to payoff her CCC operating loans, Humphrey caused Ms. Acombs CCC loans to go into default, forcing the CCC to file a lawsuit against her. While the lawsuit was pending, defendants argue that Ms. Acomb was unfairly denied FmHA loans and subjected to harassment by Assistant United States Attorney Christopher Taffe. Item 58, 15.

Under such circumstances, defendants contend that they were unable to complete the expansion of the hog farm and prevented from earning the money needed to remain current on their FmHA loans. Id.

This affirmative defense is barred by res judicata. Under the doctrine of res judicata, also known as claim preclusion, "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." Parklane Hosiery Co. V. Shore, 439 U.S. 322, 326 n. 5 (1979). "Res judicata prevents the subsequent litigation of any defense or ground for recovery that was available to the parties in the original action, whether or not it was actually litigated or determined." Tucker v. ArthurAndersen & Co., 646 F.2d 721,727 (2d Cir.1981). Resjudicata is notconcerned with whether a prior judgment was right or wrong or whether subsequent changes in the law or considerations of fairness should merit a different result in the subsequent litigation. Nemaizer v. Baker, 793 F.2d 58, 64-66 (2d Cir. 1986). The doctrine is concerned with bringing an end to litigation after the parties have had a fair opportunity to litigate their claims.

Here, defendants attempt to relitigate the same issues they raised in Acomb v. Farmers Home Admin., 92-CV-6300L. In that case, defendants alleged that Humphrey and other federal employees unlawfully interfered with the distribution of defendants' CCC and FmHA loan money. Judge Larimer dismissed defendants' complaint in that action, finding that it failed to state a legal cause of action. Because the present case involves the same two parties (the Acombs and FmHA) and defendants are attempting to reassert the same cause of action (impossibility of performance), the doctrine of res judicata applies. Accordingly, defendants' defense of impossibility of performance is dismissed.

Even if the defense were properly before this court, it would be dismissed for lack of merit. As evidenced by Humphrey's letters to Ms. Acomb dated October 26, 1981, and November 15. 1982, defendants were delinquent on their FmHA loans well before Ms. Acomb's CCC loans ever became an issue. See Item 63, Exh. 17. And as evidenced by Humphrey's letter of November 15, 1984, this delinquency continued to grow despite attempts by FmHA employees to reschedule and reamortize the loans. See Item 1, ¶¶ 19-20; Item 59, Exh. 2a.

Furthermore, it is clear from the record that the reason defendants became delinquent on their FmHA loans was not due to any wrongdoing on the part of Humphrey or other FmHA employees, but because defendants' hog farm was not a profitable operation. It was an operation which required large overhead costs and produced little short-term profit.

Although defendants submit a number of documents indicating that the farm had the potential to be profitable if managed correctly (Item 59, Exh. 14), their inability to remain current on their FmHA loans establishes that the farm operation never actually made a profit. By 1985. defendants were delinquent in making approximately $287,439.17 worth of payments on their FmHA debt, which totaled approximately $900,000.00. Item 51 Exh. 16, March 18, 1985, "Letter to Joyce Acomb from William Humphrey." As a result, defendants' 1985 FmHA application for loan and loan-servicing was denied.

However, the denial of FmHA loans did not deter defendants from continuing with their plans to expand the hog farm. Instead of relying on federal loans, defendants used commercial credit to pay farm operation expenses. Item 59, ¶ 10. When the credit card

limits Were reached, defendants resorted to selling approximately $700,000.00 worth of hogs which had been pledged as collateral for their FmHA loans. Item 59, ¶ 14.

To date, FmHA has not received a penny of the illegal proceeds. Item 78. Instead, defendants used the money to pay their other creditors. The court also notes that plaintiff has been forced to pay several years worth of real estate taxes in order to protect the security interest on the farm. Item 78. Property taxes were another expense that defendants chose not to pay so that they would have more cash on hand to either pay off their other creditors or invest additional money into the sinking hog farm. In sum, it is obvious that defendants preferred to use the money they were able earn to pay creditors other than FmHA. As such, their argument that FmHA made it impossible for them to repay their FmHA debt is without merit.

3. Failure to Comply with Federal Regulations

As a third affirmative defense, defendants argue that FmHA, specifically Humphrey, Dendis, and Charles Valsing ('Valsing"), failed to comply with federal regulations. In particular, defendants allege that FmHA did not grant loan-servicing options such as debtors' forbearance, modifications, and restructurings to which Ms. Acomb was entitled, thus denying her equal protection under the law.

Defendants' assertion is barred by res judicata. As noted previously, defendants already brought suit against FmHA, Humphrey, Dendis, and Valsing in Acomb v. Farmer's Home Administration, No. 92-CV-6300L. One of the claims in that action was that Humphrey and the other defendants conspired to commit fraud and other intentional wrongdoings in the servicing of defendants' loans. Judge Larimer found that the

allegations of conspiracy and fraud failed to state a cause of action for which relief could be granted. The case was dismissed, and the Acombs were sanctioned for $2,000.00. Given that the same parties and the same issues are involved here, the defense is barred by res judicata.

Even if the defense were properly before this court, FmHA has submitted documentation establishing that it did not violate federal regulations regarding loan servicing, restructuring, and foreclosure. The exhibits in Item 51 and Item 63 detail the servicing options and notification requirements that FmHA is obliged to follow. The exhibits also provide copies of letters sent to Mr. and Mrs. Acomb regarding their loans and the available FmHA-servicing options. While it is true that FmHA denied defendant the deferral she requested in Novemberof 1984, the March 18,1985, letter verifies that FmHA was justified to do so. At the time Ms. Acomb requested the deferral, defendants were in debt for more than $900,000.00 and had been consistently borrowing more money than they were capable of repaying. Item 51, Exh. 16.

Defendants' claim that the denial of a deferral violated 7 C.F.R. § 1951.41 also lacks merit. The set-aside provision published at7 C.F.R. § 1951.41, which defendants cite as being violated, did not go into effect until November 1,1985. See 50 F.R. 45740. Thus, the provision does not apply to Ms. Acomb's 1984 request for a deferral. As such, defendants fail to prove that a triable issue of fact exists as to whether plaintiff violated federal regulations in the servicing of their FmHA loans.

4. "Coleman Injunction" and the Agricultural Credit Act of 1987

Defendants further contend that summary judgment is not appropriate because

there is a material issue of fact as to whether plaintiff violated the "Coleman Injunction' issued in Coleman v. Block, 580 F. Supp. *194* (D.N.D. 1983). That injunction prohibited, inter alia FmHA from "liquidating the living and operating allowance from sale proceeds of crops and livestock offered as collateral for FmHA loans, unless the FmHA provided 30 days' written notice of the action with reasons for the action, a right to an appeal, and an opportunity to establish eligibility for loan deferral under 7 U.S.C. § 1981a." Coleman v. Lying, 864 F.2d 604, 605 (8th Cir. *1988)* citing Coleman v. Block, 580 F. Supp. 194, 210-11 (D.N.D. 1984).

Here, defendants claim that Humphrey violated the injunction when he refused to release any portion of the proceeds from the Hatfield Packing Company, and in doing so caused defendants to default on their FmHA loans. See Item **591** Exh. 4. This claim is barred by res judicata, as defendants raised the same issue in Acomb v. Farmers Home Admin. 92-CV-6300L, Item 51, Exh. 11-B p. 19-20. Judge Larimer dismissed the claim finding that "[a]n alleged violation of that injunction is not actionable... since the injunction was rendered moot by the Agricultural Credit Act ("ACA") of 1987," and no private action exists under the ACA. Therefore, defendants' claim that FmHA violated the Coleman Injunction is dismissed.

B. Counterclaims and Third Party Complaint

Defendants further argue that in addition to the affirmative defenses, summary judgment is barred by the counterclaims listed in their amended answer (Item 27) and the issues raised in their third-party complaint. The counterclaims contain allegations against FmHA, Humphrey, Dendis, Taffe, Valsing, Judge Telesca, and one of Judge Telesca's

employees. Defendants allege federal-question jurisdiction for each counterclaim based upon the violation of the Acombs' rights under 42 U.S.C. §§1983, 1981,1982, 1985(2)(3), the Bivens doctrine, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. The third-party complaint raises the same issues with some greater detail as the countercfaims, alleges new violations under 42 U.S.C. § 1988 and the First and Seventh Amendments, and adds the United States of America, Pierre Labourdette ('Labourdette'), Judge Larimer, Nancy Neu ("Neu"), and John Doe, Mary Roe, and XYZ ;Corporation as defendants.

1. Claims against FmHA, Humphrey, Dendis, Valsing, Labourdette, Neu, and other unnamed federal employees

Defendants allege in both their countercfaim and third-party complaint that "[b]ut for the fraud, conspiracy by an array of government officials (later named as FmHA. Humphrey, Dendis, Valsing, Pierre Labourdette, Nancy Neu and unnamed federal employees) the Acomb farm enterprise would at this point in time be very successful." Item 43, Exh. 2, p. 2; see also Item 27. These allegations are identical to those asserted by the Acombs in previous suits against FmHA, Humphrey, and other government employees, both of which were dismissed on the merits. See Acomb v. Farmers Home Administration, et al., 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, et al., 93-CV-6431 L.

As discussed in greater detail above, the doctrine of res judicata precludes the parties or their privies from relitigating issues that were or could have been raised in an action where a final judgment on the merits was issued. Leather v. Eyck. 180 F.3c1 420.

423 (2d Cir. *1999).* Res judicata was judicially created in order to relieve parties "of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Allen V. McCurry, 449 u.s. 90, 94(1980).

Here, defendants attempt to relitigate claims already decided by Judge Larimer in Acomb v. Farmers Home Administration, 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, 93-CV-6431. As such, the claims are dismissed.[6]

2. **Claims against Judge Larimer and Judge Telesca**

Defendants' counterclaim and/or third-party complaint alleges wrongful conduct on the part of Judge Telesca and Judge Larimer. It is settled law, however, that judges are protected by absolute immunity for judicial acts unless they action clear absence of jurisdiction. Mireless v. Waco, 502 U.S. 9 (1991).

Here, defendants contend that both Judge Telesca and Judge Larimer denied farmers the opportunity to present evidence in the litigation of various cases in the Western District of New York. See Items 27 and 43. Thus, it is clear that defendants' claims against both Judge Telesca and Judge Larimer stem from theirjudicial roles; and as sucK defendants must raise evidence which creates a question as to whether either judge acted

[6]Although Nancy New and Pierre Labourdette were not named as parties in Acomb v. Farmers Home Administration, et al. 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, et al., 93-CV-6431 L, defendants are nonetheless barred from bringing an action against them because both New and Labourdette were in privity with defendant FmHA when the two suits were filed. See Leather v. Eyck, 1999 WL 378336 (2d Cir. 1999).

in "clear" absence of all jurisdiction." Stump v. Sparkman, 435 U.S. at 357 (citation omitted). Defendants fail to do so.

While it is true that Judge Larimer did not allow defendants to present evidence in Acomb v. Farmers Home Administration, et al., 92-C V-6300L; and Florence Carney Estate v. Farmers Home Administration, et al., 93-C V-6431 L, two actions over which he presided, his decision to deny their request was completely justified. A review of the decisions in the two cases reveal that both cases were dismissed in the initial stages of litigation because the court determined that it was without jurisdiction, the defendants lacked standing, and the complaint failed to state a cause of action. Under such circumstances, there was no remedy under the law, and defendants were therefore not entitled to present evidence. Defendants provide no evidence to prove the opposite; and as such, Judge Larimers actions are protected by judicial immunity, and the counterclaim and third-party complaint against him are dismissed.

Defendants' allegation that Judge Telesca also denied them the right to present evidence in United States v. Acomb, 84-CV-1369, is conclusory and unsubstantiated. Moreover, the allegation is contradicted by defendants' own papers, which clearly establish that Judge Telesca fully considered all of the documents that the Acombs submitted in their case. In fact, after considering the Acombs' documents, Judge Telesca ruled in favor of Ms. Acomb, discharging her entire CCC debt.

Even if sufficient evidence exists which establishes that defendants were denied the right to present evidence, Judge Telesca is protected by judicial immunity. As explained above, a judge is protected from lawsuits regarding the decisions he made as a judge unless he was acting without jurisdiction. None of the evidence submitted in this case

raises even a doubt as to whether Judge Telesca lacked jurisdiction to preside over United States V. Acomb. As such, defendants' claims on that ground fails.

In addition to preventing them from introducing evidence, defendants also claim that Judge Telesca is liable for the allegedly dishonest actions of his court reporter, John DeMartino. Apparently defendants sent DeMartino two checks for $100.00 and $450.00 for a transcript of the proceedings in United States v. Acornb, 84-CV-1389. Defendants claim that DeMartino accepted the checks, but to date he has not provided them with a copy of the transcript. See item 56, ¶ 18; item 59, Exh. *17-19.*

Judge Telesca cannot be held responsible for the private business transactions of his court reporter. The claim involving DeMartino arises from a private business tran~action between DeMartino and defendants. Thus, this claim involves state, not federal, law. Moreover, the claims are wholly unrelated and irrelevant to this foreclosure action. Accordingly, the counterclaims and third-party complaint against Judge Telesca are dismissed.

3. Claims Against Christopher Taffe

The fourth and fifth counterclaims and the third-party complaint (Item 42, ¶111 16 and 17) concern the criminal charges which were brought against Ms. Acomb by the United States Attorney in October of 1988 but subsequently dropped in 1991. Defendants allege that Christopher Taffe, the Assistant United States Attorney assigned to handle the case, is guilty of making false accusations, discrimination, conspiracy, abuse of prosecution, perjury, malice, fraud, and denial of due process, all of which allegedly caused defendants extreme mental and emotional distress.

The claims against Taffe must be dismissed because they are, wholly unrelated to the present foreclosure action and thus do not qualify as a counterclaim under Rule 13 of the Federal Rules of Civil Procedure. Furthermore, there is no evidence presented involving Taffe which would cause a reasonable jury to absolve defendants of their responsibility to repay their FmHA loans. The claims against Taffe all relate to the1988 criminal case against Joyce Acomb and have nothing to do with this foreclosure action. The decision to prosecute Ms. Acomb was not even that of FmHA. It is solely the province of the U.S. Attorney to prosecute for offenses against the United States. The claim against Taffe bears no relationship to the plaintiffs complaint and is inappropriate to assert as a counterclaim.

The claims against Taffe are also time-barred. A counterclaim that seeks affirmative relief is an independent cause of action and must comply with the applicable statute of limitations. Hurst v. U.S. DeDt. of Educ., 901 F.2d 836 (10th Cir. 1980): The New York Civil Practice Law and Rules Section 214(5) provides for a three-year statute of limitations for an action to recover damages for personal injury. [S]ection 214(5) of the New York Civil Practice Law and Rules is the applicable statute of limitations for Bivens actions brought in federal court in New York State." Chin v. Bowen, 833 F.2d 21, 24 (2d Cir. 1987). The most recent date indicated by defendants in which the alleged violations occurred is January 29, 1991. As such, more than three years has passed, and the claim is time-barred. Thus, this claim must be dismissed upon the basis that it fails to state a claim upon which relief can be granted.

Even if the claim against Taffe was timely, it would not bar plaintiffs motion for summary judgment. As indicated above, plaintiff provides sufficient evidence to establish

that there are no genuine issues of material fact as to the validity of the mortgages and that defendants are now in default on those mortgages. Therefore, to defeat summary judgment, defendants must identify concrete evidence sufficiently probative to warrant a reasonable jury returning a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Accordingly, the claims against Taffe are dismissed.

4. Remaining Counterclaims and Third Party Defendants

The court has considered defendants' remaining claims and arguments and find them to be without merit. Neither the counterclaims nor the remaining claims included in the thfrd-party complaint comply with Federal Rule of Civil Procedure 8, which requires that a complaint include a "short and plain statement" of the claim that is "simple, concise, and direct." Here, defendants' ramblings fail to link specific actions of the plaintiff or third-party defendants to any viable cause of action. Moreover, even if this court were to accept every fact alleged in the counterclaims and third-party complaint as true, the allegations are at best speculative. It is well established that a well-founded motion for summary judgment cannot be defeated solely on the basis of conjecture or surmise. Bryant v. Maffucci, 923 F.2d 979, 985 (2d Cir. *1991),* cert. denied, 502 U.S. 849 *(1991).* Therefore, defendants fail to establish that a genuine issue of material fact exists for trial; and thus, summary judgment is appropriate.

CONCLUSION

Accordingly, plaintiffs motion for summary judgment (Item 51) is granted, and defendants' counterclaims and third-party complaint are dismissed. Items 27 and 43. All

other motions pending in this matter are dismissed as moot (Items 67 and 70), and judgment shall be entered for the plaintiff.

So ordered.

JOHN T. CURTIN

United States District Judge

Dated: September 9, 1999

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JIJDICATA

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 29th day of June, two thousand.

PRESENT:

HON. ROGER J. MINER, HON. CHESTER J. STRAUB, *Circuit Judges.*

HON. DAVID G. TRAGER,
Judge.

UNITED STATES OF AMERICA,
P/aintiff-Counter-Defendant-Appellee,

V.

JOYCE L. ACOMB, ET AL.,
Defendants-Counter-Claimants-Appellants

SUMMARY ORDER
No. 99-6308

Appearing *for* Appellants:

Joyce L. Acomb,
CharlesBruceAcomb,
Dansville, NY
(pro se).

Appearing for Appellee:

Denise E. O'Donnell, United States Attorney, Western District of New York (Jane B. Wolfe, Assistant United States Attorney, of counsel), Buffalo, NY.

Appeal from the United States District Court for the Western District of New York (John

---

The Honorable David G. Trager, United States District Judge for the Eastern District of New York, sitting by designation.

T. Curtin, *Judge).*

AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJIJDGED AND DECREED that the judgment of the District Court is hereby AFFIRMED.

Defendants Joyce L. Acomb and Charles Bruce Acomb appeal *pro se* from a judgment of the United States District Court for the Western District of New York (John T. Curtin, *Judge),* dismissing the Acombs' counterclaims and third party complaint. On appeal, the Acombs contend that the District Court improperly granted summary judgment in favor of the government and abused its discretion by denying their requests to amend their answers. For the reasons set forth below, we affirm the District Court's judgment.

On May 9, 1996, the government filed an action against the Acombs seeking to foreclose on four real property mortgages used to secure Farm Service Agency ("FSA") loans that were in default and to enforce its security interest in the Acombs' farm equipment. The Acombs' filed an answer *pro se* on September 30, 1996, and, as of right pursuant to Fed. R. Civ. P. 15(a), an amended answer on October 24, 1996. The amended answer denied the government's allegations that they had failed to make payments and were in default under the mortgages, but admitted to being in default with respect to the security agreements. The amended answer also contained nine claims, styled as "affirmative defenses and counterclaims," against various government agencies and officials. The government responded to the Acombs' counterclaims on December 24, 1996. The Acombs moved to amend their answer again on January 21, 1997, and the District Court denied this motion by order entered November *25,* 1997.

On September 16, 1997, the Acombs moved to file a third party complaint against several government official and agencies alleging a variety of constitutional and statutory civil rights claims. The government moved for summary judgment on December 15, 1997, seeking a judgment of foreclosure and sale of the Acornbs' property and the dismissal ox the Acombs' affirmative defenses, counterclaims, and third party complaint. The Acombs responded to the government's motions and also filed two amended answers; since they did not obtain leave of the court to file the answers, the District Court did not consider the contents of their answers when deciding on the government's motion for summary judgment. Summary judgment was granted in favor of the government on September 14, 1997, and the District Court entered a judgment of foreclosure and sale of the Acombs' property on October 6, 1999. This appeal followed.

First, we review the District Court's grant of summary judgment *de novo,* viewing the facts in the light most favorable to the Acombs. *See, e.g., Asian idis v. United States Lines, Inc.,* 7 F.3d 1067, 1072 (2d Cir. 1993). Moreover, we read the Acombs' *pro se* pleadings "liberally and interpret them 'to raise the strongest arguments that they suggest,'" *McPherson v. Coombe,* 174 F.3d 276, 280 (2d Cir. 1999) (quoting *Burgos v. Hopkins,* 14 F.3d 787, 790 (2d Cir. 1994)), but the pleadings must evince more than "bald assertion[s], completely unsupported by [the] evidence," *Carey v. Crescenzi,* 923 F.2d 18, 21 (2d Cir. 1991). Where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *See* Fed. R. Civ. P. 5 6(c); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 25 1—52 (1986).

In this case, the District Court properly found that the government was entitled to

summary judgment. There is no dispute that the Acombs are in default with respect to valid security agreements covering their farm equipment, and while they deny having defaulted on their mortgage obligations, the government has amply documented the transactions at issue as well as the Acombs' default on the loans. In the face of this detailed evidence in support of the government's motion *for* summary judgment, the Acombs have failed to meet their burden of "set[tingl forth specific facts showing that there is a genuine issue for trial" regarding whether they have defaulted on their loan obligations—the Acombs "cannot rest on 'mere allegations or denials' of the facts asserted" by the government. *Endico Potatoes, Inc., v. CIT Group/Factoring. Inc.,* 67 F.3d 1063, 1066 (2d Cir. 1995) (quoting Fed. R. Civ. P. *56(e)).* Moreover, the four "affirmative defenses" advanced by the Acombs—(1) that the foreclosure action is time-barred by a six-year statute of limitations; (2) that the actions of government officials made it impossible for them to repay their loan obligations; (3) that FSA officials failed to comply with federal regulations regarding loan servicing, restructuring, and foreclosure; and (4) that the government violated the injunction entered by the court in *Coleman v. Block,* 580 F. Supp. 194 (D.N.D. 1983) (the "Coleman Injunction") -- are without merit. With respect to the first affirmative defense, it is settled law that "the United States is not bound by a statute of limitations unless Congress has explicitly expressed one," *Wesnau Land Corp.* v. *US. Small Business Admin.,* 1 F.3d 112, 115 (2d Cir. 1993) (internal quotation marks omitted). As for the remaining three affirmative defenses, the District Court properly concluded that these defenses are both barred by res judicata and lacking in merit. For substantially the reasons given by the District Court, we conclude that the government was entitled to summary judgment.

Second, we review the District Court's decision to deny the Acombs' requests to amend their answers for abuse of discretion. *See, e.g., Azurite Corp.* V. *Amster & Co., 52* F.3d 15, 19 (2d Cir. 1995) (decision to grant leave to amend pleading is at discretion of district court). While a *pro se* litigant should be granted leave to file amended pleadings at least once when it is not "'beyond doubt that the plaintiff can prove no set of facts in support of his claim[s]," leave to amend need not be given if the pleading does not give any indication that a valid claim might be stated. *Platsky v. CIA,* 953 F.2d 26,28 (2d Cir. 1991) (per curiam) (citation omitted); *see also Pan gburn v. Culbertson,* 200 F.3d *65,* 70—71 (2d Cir. 1999).

The Acombs argue that the District Court erroneously refused to consider their amended answer and counterclaims, basing this decision on their supposed failure to obtain permission from the court to file amended pleadings when, in fact, their motions for leave of the court were not entered on the District Court docket sheet. While the record is unclear as to whether these motions were, in fact, properly filed, the District Court acted well within its discretion to refuse any further amendments by the Acombs, since they already had amended their answer once as of right and the additional amendments would have been futile. *See Pangburn,* 200 F.3d at 70—71 ("'futility' is a valid reason for denying a motion to amend"); *Ricciuti v. New York City Transit Auth.,* 941 F.2d 119, 123 (2d Cir. 1991) (district court "may review [proposed amendment] for adequacy and need not allow its filing if it does not state a claim upon which relief can be granted"); *Tn-State Judicial Servs., Inc. v. Markowitz,* 624 F. Supp. *925,* 926 (E.D.N.Y. *1985)* ("In this Circuit, an amendment is considered futile if the amended pleading fails to state a claim."). As the District Court noted, "[the Acombs'] ramblings fail to link specific actions of the

plaintiff or third-party defendants to any viable cause of action. Moreover, even if this court were to accept every fact alleged in the counterclaims and third-party complaint as true, the allegations are at best speculative." Since the Acombs' speculative assertions fail to advance any valid claims, the District Court did not act improperly by refusing to allow the Acombs' amendments. Although the parties do not raise the issue, we address whether this *pro se* litigant had adequate notice of the nature and consequences of a motion for summary judgment. Where the proper notice has not been given, the mere fact that the pro *se* litigant has made some response to the motion for summary judgment is not dispositive where neither his response nor other parts of the record reveal that he understood the nature of the summary judgment process.~' *Vital v. Interfaith Med. Ce,-.,* 168 F.3d 615, 621 (2d Cir. 1999). In the absence of a "clear indication" that *apro se* litigant "understands the nature and consequences of Rule 56... he or she must be so informed by the movant in the notice of motion or, failing that, by the district court." *McPherson v. Coombe,* 174 F.3d 276, 282 (2d Cir. 1999). This notice must include

> a short and plain statement that all assertions of material fact in the movant' s affidavits will be taken as true by the district court unless the *pro Se* litigant contradicts those factual assertions in one or more affidavits made on personal knowledge containing facts that would be admissible in evidence or by submitting other materials as provided in Rule 56(e).

Id. Applying the standards set forth in *Vital* and *McPherson,* we find that the government's Notice of Motion provided the Acombs with sufficient notice of the nature and consequences of the summary judgment motion, including their obligation pursuant to Fed. R. Civ. P. *56(e)* to "submit affidavits or other documentary evidence contradicting (the government's factual] assertions." Notice of Motion and Motion for Judgment of Foreclosure and Sale and for

Dismissal of the Acombs' Counterclaims and Third-Party Complaint, at 2.

Accordingly, for all the foregoing reasons, our order of December 10, 1999, staying the District Court's judgment of foreclosure and sale pending appellate review is VACATED, and the judgment of the District Court is AFFIRMED.

FOR THE COURT:
By: ROSEANN B. MACKECHNIE, Clerk

Date6/29/00

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Counter-Defendant-Appellee

vs

JOYCE L. ACOMB and
CHARLES B. ACOMB,
Defendants-Counter-Claimants-Appellants,
CHAMBERLAIN D"AMANDA; OPPENHEIMER & GREENFIELD; FURST-MCNESS CO.; MARQUART PRODUCTS, INC.; MARINE MIDLAND BANK, N.A.; PIONEER HIBRED INTERNATIONAL; LIPSITZ, GREEN, FAHRINGER. ROLL, SALISBURY and CAMBRIA; C.G. MAICHLE OIL CO., INC.; NORSTAR BANK, N.A. nka FLEET BANK; AGWAY, INC.; FORD MOTOR CREDIT CO.; DOUGLAS J. LUSTIG, as Trustee of the Bankruptcy Estate of Edwin V. Briggs; FARM CREDIT OF WESTERN NEW YORK, ACA; CABOT OIL AND GAS CORP.; DEVONIAN ENERGY CORP.; BRENT M. ACOMB; JOHN DOE; MARY ROE; XYZ CORP.,
Defendants.

MOTION FOR REHEARING OUT OF TIME EN BANC

Joyce L. Acomb and
Charles B. Acomb, Pro Se
8317 State Rt. 63 N.
Dansville, New York14437
Tel: 716-335-6804

JANE B. WOLFE, ausa
138 Delaware Avenue
Buffalo, New York 14202
Tel: 716-551-4811, Ext. 874

BEST AVAILABLE COPY

Our names are Joyce L. Acomb and Charles B. Acomb. We are defendants and counter-claim plaintiffs in this action, and as such, are familiar with this case. We had complained, through amotion, filed with the 2nd Circuit Court of Appeals, that two important motions have disappeared, even though they had been stamped and filed with the U.S. District Court in Buffalo, New York, and with the U.S. District Court in Rochester, New York.

1. Please see Exhibit No. 1, copy of motion for Extension of Time or Stay of the Proceedings, stamped January 1 1, 2000. The directions at the bottom states: "It is hereby ordered that the motion be and it hereby is sent to the panel which will become the appeal, with the opposition and reply papers". This opinion is stamped April 10, 2000.

2. Please see Exhibit No. 2, copy of complete motion, and it is denied, with no legal opinion, it is stamped May *23,* 2000. There is no indication as to who was responsible for this opinion, "Denied".

3. Found within Exhibit No. 2, is our affidavit as to what took place.

A. We forgot to serve the defendants that are named in our counter-suit.

B. We filed to amend in a timely fashion

C. Judge Curtin denied our motion to amend, with leave to renew afler settlement proceedings have been concluded. The government never gave us a reasonable offer.

D. We then filed a motion to amend in Buffalo District Court, on or about December 8, 1997.

E. About two days later, we filed another motion to amend in Rochester District Court, on December 11, 1997.

F. We never had information that these motions, even though received and stamped in each Court, were never entered on the docket. We never had the docket to review until after the appeal process had begun. Thus, we could never argue this in the Lower Court.

4. We realize at this late date that we should have mentioned specific language located in Judge Curtin's Decision and Order. This document is the last Exhibit,

located in the Government's Reply Brief with Exhibits. See Exhibit No. 3, located herein, page 8, of Judge Curtin's Order.

> ."defendants also filed two amended answers. See items 54 and 55. Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the court. Thus, the information therein will not be considered in reaching a decision on the pending motions. See Fed.R.Civ.P. 15(a) (1999).

5. We filed a counter-claim because we were looking for justice. In Haines V. Koerner, the nation's highest court tells the whole world, "let them present evidence". It is our prayer that the 2nd Circuit will allow us an opportunity to present evidence.

6. In Canon 1, A Lawyer Should Assist In Maintaining The Integrity and Competence of The Legal Profession.

7. If there is questionable conduct by any and all government officials, should there not be some discipline?

8. Rule 15 of Federal Rules of Procedure, (a) Amendments, line 8 states:

> "Otherwise a party may amend the party's pleading only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires.".

We pray that the Second Circuit will allow us to serve those defendants named in our counter-suit.

DATED: September 5, 2000
Dansville, New York

Charles B. Acomb, Pro Se
8317 State Rt. 63 N.
Dansville, NY 14437
Tel: 716-335-6804

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion, in the U. S. Postal Service, first class, postage prepaid to:

Jane B. Wolfe
Assistant U.S. Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 5th day of September, 2000.

Charles B. Acomb

EXHIBIT # 1

UNITED STATES COURT of APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff,

No. 99-6308

vs

NOTICE OF MOTION

for EXTENSION OF TIME
or STAY OF THE PROCEEDINGS

JOYCE L. ACOMB,
CHARLES B. ACOMB, et al,
Defendants.

MOTION BY:	Opposing Counsel
Charles B. Acomb and Joyce L. Acomb, Pro se 8317 State Rt. 63 N. Dansville, New York 14437 (716) 335-6804	Jane B. Wolfe, A.U.S.A. Western District of New York 138 Delaware Avenue Buffalo, New York 14202 (716) 551-4811, Ext. 874

Has consent of opposing counsel,

A. been sought' No
B. been obtained' No
Has service been effected' Yes
Is oral argument desired' No

Has argument date of appeal been set'
A. by scheduling order' No
B. by firm date of argument notice? No

Judge or agency whose order is being appealed
Hon. John T. Curtin

Brief statement of the relief requested--

Extension of Time for court to make corrections to the Record and the Docket

Charles B. Acomb, Pro se — Appearing for Charles B. Acomb and Joyce L. Acomb — Defendant

DATE--01/10/2000

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is:

sent to the panel which will hear the appeal, with the opposition & reply papers.

FILED April 10, 2000

EXHIBIT # 2

UNITED STATES COURT of APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff,

No. 99-6308

vs

NOTICE OF MOTION

for EXTENSION OF TIME
or STAY OF THE PROCEEDINGS

JOYCE L. ACOMB,
CHARLES B. ACOMB, et al,
Defendants.

MOTION BY:	Opposing Counsel
Charles B. Acomb and Joyce L. Acomb, Pro se 8317 State Rt. 63 N. Dansville, New York 14437 (716) 335-6804	Jane B. Wolfe, A.U.S.A. Western District of New York 138 Delaware Avenue Buffalo, New York 14202 (716) 551-4811, Ext. 874

Has consent of opposing counsel,

A. been sought'	No
B. been obtained'	No
Has service been effected'	Yes
Is oral argument desired'	No

Has argument date of appeal been set'

A. by scheduling order'	No
B. by firm date of argument notice?	No

Judge or agency whose order is being appealed
Hon. John T. Curtin

Brief statement of the relief requested--

Extension of Time for court to make corrections to the Record and the Docket

Charles B. Acomb, Pro se Appearing for Charles B. Acomb and Joyce L. Acomb Defendant

DATE--01/10/2000

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is:

Denied

FILED May 23, 2000

Our names are Joyce L. Acomb and Charles B. Acomb. We are defendants in this action, and as such, are familiar with this case. We have just discovered some very disturbing information. Consequently, we are filing an emergency motion for an Extension of Time, and or, Stay of The Proceedings, so the Honorable Court of Appeals can investigate the following facts.

1. On Friday, January 7, 2000, my grandson and I, Charles B. Acomb, spent the day in the Appellate Law Library in Rochester, New York, looking up more law in regard to res-judicata, concerning this case. Joyce L. Acomb was home finishing the organization of the appendix to the instant case. While doing this, she discovered two (2) motions that had been stamped, but not entered or recorded in the Civil Docket for Case #97-CV-22. See Exhibit No. I.

2. The first motion not recorded was Motion For Amendment, stamped on the back of the motion by a clerk in Buffalo, New York. See Exhibit No. II. I considered this to be a very important motion; so I drove to Buffalo to file it personally. I have always been afraid that an important motion could be lost. This motion was dated December 9, 1997. Please review the Docker, Exhibit No.1. There is no record of an entry on that date.

3. The second motion not recorded was another Motion For Amendment, stamped on the front by a clerk in Rochester, *New* York, and signed. See Exhibit No. III. I drove to Rochester, New York to file it personally because it was very important. It is dated December 11, 1997. Please review the Docket, Exhibit No. I. There is no record of entry on the Docket for that date.

4. In these motions, we had prayed that we could Amend. In a Court Order, dated October 31, 1997, that was entered on the Docket on November 3, 1997, as No. 47, Judge Curtin had extended the time for the Government to respond to Acomb's motion for Amendment until December 1, 1997. He then states; "In other words, everything will be stayed pending the report from the United States Department of Agricultures' Independent Review Team". Please see Exhibit No. IV.

5. Please review Exhibit No. V, an Order by Judge Curtin, Docket No. 49, dated November 24, 1997. He states; "Pending is defendants motion to Amend The Answer (item32). The motion is denied, with Leave To Appeal after settlement proceedings have been concluded".

6. We hope the Honorable Court will notice that the Stay Of Proceedings mentioned in the Order of October 31, 1997, was ignored.

7. We filed the new motions to Amend, so as not to be late, but they were never entered on the Docket, or acted upon by Judge Curtin.

8. Are we citizens of the United States? Do we have any rights at all?

9. Should there be a proceeding so as to recognize these two motions that were either lost or disposed of by Government Agents, or employees?

10. We pray that the Honorable Court will be interested in justice for two representatives of agriculture.

11. We ask for only the time it will take to make these corrections. It is our position that these two motions should be attached to an Amended Docket.

DATED: January 10, 2000
Dansville, New York

Charles B. Acomb

Joyce L. Acomb

CERTIFICATE OF MAILING

I, Charles B. Acornb, did place a copy of this motion in the United States Postal Service, first class postage prepaid, to:

Jane B. Wolfe
Assist. United States Attorney
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

on this 10th. day of January, 2000.

Charles B. Acomb

EXHIBIT I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

–

United States of America,

Plaintiff-Appellee

97-C V-22C

-vs-

Joyce L. Acomb and Charles Bruce Acomb,

Defendants-Appellants

–

INDEX TO RECORD ON APPEAL

1-17. Docket Entries

Proceedings include all events. APPEAL clos99
97cv22 USA V. Acornb, et al. TR - IN

U.S. District Court
Western District of New York (Buffalo)

CIVIL DOCKET FOR CASE #: 97-CV-22

USA V. Acornb, et al
Assigned to: Senior USDJ John T. Curtin
Demand: $0,000
Lead Docket: None
Dkt # is 6:96-CV-06229
Dkt # in Rochester : is 6:96-CV- 06229
Filed: 05/09/96
Jury demand: Defendant
Nature of Suit:220
Jurisdiction: US Plaintiff

Cause: 28:1345 Foreclosure
Case type: 1. civil 2. intradistrict transfer in

5/9/96 1 COMPLAINT filed; Government filing - no fee. (11) (Entry date 05/10/96]

5/9/96 -- SUMMONS(ES) issued for Joyce L.. Acornb, Charles Bruce Acomb, Chamberlain, D'Amand, First-McNess Co., Marguart Products, I, Marine Midland, Pioneer Hibred Inter, Lipsitz, Green, Fahr, C.G. Maicle Oil Co., Norstar Bank, N.A., Agway, Inc., Ford Motor Credit, Douglas J. Lustig, Farm Credit of WNY, Cabot Oil and Gas Co, Devonian Energy Corp, Brent M. Acornb, John Doe, Mary Roe, XYZ Corporation (11) [Entry date 05/10/96]

5/9/96 2 NOTICE of LIS PENDENS by USA (11) [Entry date 05/10/96]

5/14/96 3 NOTICE of attorney appearance for Lipsitz, Green, Fahr by Joseph J. Gumkowski (11) [Entry date 05/15/96]

5/15/96 4 WAIVER OF SERVICE Returned Executed as to Lipsitz, Green, Fahr Request mailed on 5/10/96 Answer due on 7/9/96 for Lipsitz, Green, Fahr (11) [Entry date 05/16/96)

5/15/96 5 WAIVER OF SERVICE Returned Executed as to Douglas J. Lust:ig Request mailed on 5/10/96 Answer due on 7/9/96 for Douglas J. Lustig (11) (Entry date 05/17/96)

5/15/96 6 WAIVER OF SERVICE Returned Executed as to C.G. Maicle Oil Co., Request mailed on 5/10/96 Answer due on 7/9/96 fcr C.G. Maicle Oil Co., (11) (Entry date 05•/17/96)

5/16/96 7 WAIVER OF SERVICE Returned Executed as to Marquart Products, I. Request mailed on 5/10/96 Answer due on 7/9/96 for Marquart Products, I (cm) (Entry date 05/20/96]

5/16/96 8 WAIVER OF SERVICE Returned Executed as to Marine Midland Request mailed on 5/10/96 Answer due on 7/9/96 for Marine Midland (cm) (Entry date 05/20/96)

Proceedings include all events. APPEAL clos99
USA V. Acomb, et al TR - IN
1 : 97cv22

5/17/96 9 WAIVER OF SERVICE Returned Executed as to First-McNess Co. Request mailed on 5/10/96 Answer due on 7/9/96 for First-McNess Co. (cm) (Entry date 05/21/96)

5/23/96 10 NOTICE of attorney appearance for C.G. Maicle Oil Co., by David A. Shults and Waiver (11) (Entry date 05/29/96]

6/3/96 11 WAIVER OF SERVICE Returned Executed as to Pioneer Hibred Inter Request mailed on 5/10/96 Answer due on 7/9/96 for Pioneer Hibred Inter (11) [Entry date 06/05/96]

6/10/96 12 NOTICE of attorney appearance for Chamberlain, D'Amand by Henry R. Ippolito and Waiver in Foreclosure (11) [Entry date 06/12/96)

6/11/96 13 WAIVER OF SERVICE Returned Executed as to Chamberlain, D'Amand Request mailed on 6/10/96 Answer due on 8/9/96for Chamberlain, D'Amand (11) [Entry date 06/13/96)

6/12/96 14 WAIVER OF SERVICE Returned Executed as to Cabot Oil and Gas Co Request mailed on 5/20/96 Answer due on 7/19/96 forCabot Oil and Gas Co (II) [Entry date 06/14/96]

6/12/96 15 WAIVER OF SERVICE Returned Executed as to Brent M. Acomb Request mailed on 5/10/96 Answer due on 7/9/96 for Brent M. Acomb (11) [Entry date 06/14/96)

6/20/96 16 ANSWER to Complaint by Cabot Oil and Gas Co (Attorney John H. Heyer), (11) [Entry date 06/21/96]

6/27/96 17 RETURN OF SERVICE executed as to Ford Motor Credit 6/3/96. Answer due on 6/24/96 for Ford Motor Credit (11) [Entry date 06/28/96]

7/10/96 18 RETURN OF SERVICE executed as to Norstar Bank, N.A. 7/2/96 Answer due on 7/22/96 for Norstar Bank, N.A. (11) [Entry date 07/12/96]

8/16/96 19 RETURN OF SERVICE executed as to Charles Bruce. Acomb 8/14/96 Answer due on 9/3/96 for Charles Bruce. Acomb (11) [Entry date 08/20/96)

8/28/96 20 RETURN OF SERVICE executed as to John Doe 8/1/96 Answer due on 8/21/96 for John Doe (11) [Entry date 09/05/96]

8/28/96 21 RETURN OF SERVICE executed as to Joyce L.. Acomb 8/1/96 Answer due on 8/21/96 for Joyce L.. Acomb (11) (Entry date 09/05/96]

9/9/96 22 RETURN OF SERVICE executed as to Agway, Inc. 9/3/96 Answer due on 9/23/96 for Agway, Inc. (11) [Entry date 09/10/96]

Proceedings include all events. APPEAL clos99
1 : 97cv22 USA V. Acomb, et al TR - IN

9/10/96 23 WAIVER OF SERVICE Returned Executed as toFarmCreditofWNY.Requestmailedon5/10/96. Answer due on 7/9/96 for Farm Credit of WNY (11) [Entry date 09/10/96]—

9/11/96 24 NOTICE of attorney appearance for Farm Credit of WNY by Andrew J. Weidman (11) [Entry date 09/12/96]

9/30/96 25 ANSWER to Complaint and COUNTERCLAIM by Joyce L.. Acomb, Charles Bruce Acomb (By. Joyce L. Acomb and Charles Bruce Acomb) against USA (11) [Entry date 09/30/96]

10/8/96 26 STIPULATION by JaneWolfe, attorney for plaintiff and Andrew J. Weidman, attorney for defendant Farm Credit of Western New York re: relief in sub paragraph (a) of WHEREFORE clause does not pertain to defendant Farm Credit (11)[Entry date 10/09/96]

10/24/96 27 AMENDED ANSWER to Complaint by Joyce L. Acomb, Charles Bruce. Acomb : amends [25-1) answer by Charles Bruce.Acomb, Joyce L.Acomb with Counterclaims (11)[Entry date 10/24/96]

11/25/96 28 MOTION by USA for order of service on absent defendant (11) [Entry date 11/27/96]

12/2/96 29 ORDER for appearance of absent defendant. DefendantDevonian Energy Corporation shall appear or plead by1/30/97 (signed by USDJ Michael A. Telesca) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce Acomb, John H. Heyer, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (11) [Entry date 12/02/96]

12/24/96 30 ANSWER by USA to [25-2] counter claim by Charles Bruce Acomb, Joyce L.. Acornb (cm) [Entry date 12/26/96]

1/14/97 31 ORDER transferring case to Judge Curtin (signed by USDJ Michael A. Telesca) Notice and copy of order sent Jane B.Wolfe, Charles Bruce. Acomb, John H. Heyer, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNessCo., Henry R. Ippolito, Joyce L.. Acomb (11) [Entry date 01/14/97]

1/14/97 -- Original file, certified copy of transfer order and docketsheet received from Rochester Division (jd)[Entry date 01/16/97]

1/14/97 -- CASE reassigned to Senior USDJ John T. Curtin (jd)[Entry date 01/16/97]

1/21/97 32 MOTION by defendants Joyce L.. Acomb, Charles Bruce Acomb to Amend [27-1] answer by Charles Bruce. Acomb, Joyce L. Acomb (jd) [Entry date 01/22/97)]

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3/3/97 33 REQUEST FOR CLERK'S ENTRY OF DEFAULT by USA as toFirst-McNess Co., Marquart Products, I, Marine Midland,Pioneer Hibred, Norstar Bank, N.A., Agway,Inc., Ford MotorCredit, Douglas J. Lustig, Devonian Energy Corp, M. Acomb, John Mary Roe, XYZ date 03/03/97][Edit date 03/04/97]

3/4/97 34 CLERK'S ENTRY OF DEFAULT as to First-McNess Co., Marguart Products, I, Marine Midland, Pioneer Hibred Inter, Norstar Bank, N.A., Agway, Inc, Ford Motor Credit, Douglas J. Lustig, Devonian Energy Corp, Brent M. Acomb, John Doe, Mary Roe, XYZ Corporation . Notice and copy sent to Jane B. Wolfe, Charles Bruce Acomb, John H. Heyer, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L. Acomb . (jd) [Entry date 03/04/97)

4/7/97 35 STIPULATION and ORDER, of Settlement with respect to defendant Cabot Oil and Gas signed by Senior USDJ JohnT. Curtin . Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb, John H. Heyer, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 04/07/97]

5/13/97 -- NOTICE of Meeting set for 11:00 5/19/97 (jd) lEntry date 05/13/97]

5/14/97 --		NOTICE of Meeting set for 5/19/97 is postponed, a new date will be set shortly. (jd) [Entry date 05/15/97]
6/23/97	36	ORDER, the Meeting scheduled to be held on 5/19/97 is continued to 3:00 7/22/97. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb, Andrew J.. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 06/24/97]
7/22/97 --		Meeting held, default judgment to be taken against all defendants except Joyce and Charles Acomb, defendants have filed a motion to amend answer, plaintiff must reply within 60 days. JTC (jd) [Entry date 07/25/97]
7/31/97	37	Order, granting Assistant US Attorney Jane Wolfe's request: for Leave to File a reply to the motion to amend and to file a motion for summary judgment, any responses shall be made not later than 10/27/97. (signed by Senior USDJ JohnT. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb, Andrew Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 07/31/97]

Proceedings include all events. APPEAL closs99
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8//20/97 38 MOTION by Joyce L.. Acomb, Charles Bruce. Acomb Opposing USDJ Curtin's court Order 7/30/97, Granting government relief (dlc) (Entry date 08/22/97)

9/4/97 39 MOTION/JUDICIAL NOTICE by defendants Joyce L.. Acomb, Charles Bruce. Acornb for Injunction (id) [Entry date 09/04/97)

9/4/97 40 ORDER the Clerk is directed to send a copy of the Court's 7/31/97 Order to the Acomb defendants, denying the Acomb defendants [38-1] motion Opposing/To Vacate USDJ Curtin's court Order 7/30/97. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L..Acomb (jd) [Entry date 09/04/97)

9/8/97 41 MOTION JUDICIAL NOTICE & INJUNCTION by defendants Joyce L..Acomb, Charles Bruce. Acomb to Stay all proceedings (jd)[Entry date 09/09/97]

9/16/97 42 MOTION by defendants Joyce L.. Acomb, Charles Bruce. Acomb for Preliminary Injunction with attached exhibits in support. (jd) [Entry date 09/17/97]

9/16/97 43 MOTION by defendants Joyce L... Acomb, Charles Bruce. Acomb, to Serve third party defendants with attached proposed third party complaint (jd) [Entry date 09/17/97)]

9/24/97 44 ORDER, the United States shall Respond to defendants [43-1] motion to Serve third party defendants by 10/17/97, the United States shall also reply to defendants [42-1] motion for Preliminary Injunction by 10/17/97. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 09/24/97]

9/25/97 45 TRANSCRIPT of meeting held before Judge Curtin dated 7/22/97, pages 1-13. (jd) [Entry date 09/25/97]

10/1/97 46 ORDER, granting the governments 9/26/97 letter requesting a thirty-day Stay of the proceedings. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb, Andrew J. Weidman, David A.Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 10/03/97]

Proceedings include all events. APPEAL clos99
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11/3/97 47 ORDER, to stay all proceedings pending the report from the United States Department of Agriculture Independent Review Team. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb,AndrewJ. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (jd) [Entry date 11/04/97]

11/4/97 48 LETTER to Judge Curtin from Assistant United States Attorney Jane Wolfe dated 10/29/97. (jd) [Entry date 11/04/97]

11/25/97 49 ORDER denying defendants [32-1] motion to Amend [27-1] answer. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce. Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R.Ippolito, Joyce L.. Acomb (jd) [Entry date 11/25/97]

12/4/97 50 ORDER, granting Assistant US Attorney Jane Wolfe's letter request for Extension of Time to 12/15/97 to file a motion for summary the judgment. Defendants response to motion shall be due 1/30/98. (signed by Senior USDJ John T Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L. . Acomb (jd) [Entry date 12/04/97]

12/15/97 51 MOTION by plaintiff USA for judgment of foreclosure and sale, and for Dismissal of the Acombs Counterclaims and third party complaint with affidavit in support. (jd) [Entry date 12/16/97]

2/15/97 52 MEMORANDUM OF LAW by plaintiff in support of [51-1]motion for judgment of foreclosure and. sale and [51-2] motion for Dismissal of the Acombs Counterclaims and third Party complaint. (jd) [Entry date 12/16/97]

12/16/97 53 ORDER, granting assistant US Attorney Jane Wolfe's letter request for permission to File an overlength memorandum signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Jane B. Wolfe, Charles Bruce Acomb, AndrewJ.Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito, Joyce L.. Acomb (id) [Entry date 12/16/97]

12/29/97 54 AMENDED ANSWER to Complaint and COUNTERCLAIM by Joyce L. Acomb, Charles Bruce. Acornb (Appearing Pro Se) against USA (jd.) [Entry date 12/30/97]

1/27/98 55 AMENDED (AMENDED) ANSWER to Complaint; jury demand and

COUNTERCLAIM against various defendants. (mj) [Entry date 01/28/98]

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2/4/98	--	Deadline updated/Notice (JTC) the request of defendants Charles B. Acomb and Joyce L. Acomb for an. additional 30 days in which to respond is granted, they shall respond by3/6/98. (jd) [Entry date 02/04/98]
3/6/98	56	BRIEF by defendants Joyce L.. Acomb, Charles Bruce Acomb in opposition to [51-1] motion for summary judgment (jd) [Entry date 03/09/98]
3/6/98	57	LOCAL RULE 56 STATEMENT OF MATERIAL FACTS by defendants USA, Joyce L.. Acomb in opposition to [51-1] motion for summary judgment (jd) [Entry date 03/09/98]
3/6/98	58	AFFIDAVIT by defendants Joyce L.. Acomb, Charles Bruce Acomb in opposition to [51 - 1] motion for judgment offoreclosure and sale and [51-2] motion for Dismissal of theAcombs Counterclaims (jd) [Entry date 03/09/98]
3/6/98	--	DEFENDANTS INDEX FOR Exhibits received. (jd) [Entry date 03/09/98]
4/3/98	59	Defendant Acomb's Exhibits filed. (jd) [Entry date 04/03/98]
7/27/98	--	Tele-conference held with parties, plaintitf to respond to defendants dismissal motion by 8/7/98. JTC (jd) [Entry date 07/28/98]

7/28/98	--	Deadline updated; Response to Motion reset to 8/7/98 for [51-2] motion for Dismissal of the Acombs Counterclaims and. third party complaint (jd) [Entry date 07/28/98]
7/29/98	60	ORDER, the United States will file a reply to the defendants papers by 8/7/98, defendants may file a response to the governments papers by 8/31/98, as the Court desires to have all papers submitted by. 8/31/98. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Joyce L.. Acomb, Jane B. Wolfe, Charles Bruce. Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito (jd)[Entry date 07/29/98]
8/5/98	61	MOTION by defendants Joyce L.. Acomb, Charles Bruce. Acomb to Dismiss for failure to Prosecute (jd) [Entry date 08/06/98]
8/7/98	62	MOTION by plaintiff to Strike [55-1] amended (amended)answer by Charles Bruce Acomb, Joyce L. Acomb (jd) [Entry date 08/07/98]
8/7/98	63	Supplemental AFFIDAVIT by Jane Wolfe counsel for plaintiff in opposition to plaintiffs [58-1] opposition papers , in support of the governments motion to strike and in support of the governments motion for summary judgment. (jd) [Entry date 08/07/98]

Proceedings include all events. APPEAL clos99
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8/7/98 64 Reply Memorandum of Law by plaintiff to defendants [58-1] opposition to the United States Motion for summary judgment (jd) [Entry date 08/07/98]

8/14/98 65 ORDER Responses to plaintiff United States' [62-1] motion to Strike amended (amended) answer and defendants [61-1) motion to Dismiss for failure to Prosecute shall be filed by 10/5/98 , Replies may be filed by each side not later than 10/26/98 the United States' [51-1] motion for judgment of foreclosure and sale is under submission at the present time, and if that motion is granted, the present motions will be moot. signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Joyce L.. Acomb, Jane B.Wolfe, Charles Bruce. Acomb, Andrew J. Weidman, David *A.* Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito(jd) [Entry date 08/18/98]

8/18/98 66 ORDER defendants [39-1] motion seeking a stay of proceedings is dismissed, defendants [41-1] motion to Stay all proceedings is dismissed, defendants [42-1] and [43-1] motions to serve third party defendants are denied. (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Joyce L.. Acomb, Jane B. Wolfe, Charles Bruce Acornb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski; First-McNess Co., Henry R. Ippolito (jd) [Entry date 08/18/98] [Edit date 08/21/98]

8/31/98 67 MOTION by defendants Joyce L. Acornb, Charles Bruce Acomb to Amend [55-1] amended (amended) answer to complaint and counterclaim with attached proposed amended arnended answer (jd) [Entry date 09/01/98]

9/15/98 68 ORDER, the United States is directed to file a Response to defendants [67-1] motion to Amend [55-1) amended (amended) answer by 10/5/98, plaintiff is also directed to file a reply to defendants motion to dismiss by 10/5/98. (signed by Senior USDJ John T. Curtin). Notice and copy of order sent to Joyce L.. Acomb, Jane B. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito (jd) [Entry date 09/15/98]

10/5/98 69 Reply MEMORANDUM by defendants to plaintiffs [62-1] rnotion to Strike and motion for summary judgment. (jd) [Entry date 10/06/98]

10/5/98 70 AFFIDAVIT by Jane Wolfe counsel for plaintiff USA inopposition to [61-1] motion to Dismiss for failure toProsecute by Charles Bruce Acomb, Joyce L.. Acomb (jd) [Entry date 10/06/98]

Proceedings include all events. APPEAL clos99
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10/23/98 71 Plaintiffs RESPONSE to defendants[69-1)reply memorandum to United States motion to strike amended amended answer and for summary judgment. (jd) [Entry date 10/23/98)]

10/27/98 72 MOTION by defendants Joyce L.. Acomb, Charles Bruce Acornb for a 30 day Stay of the proceedings (jd)[Entry date 10/27/98]

11/4/98 73 ORDER granting defendants [72-1) motion for a 30 day Stay of the proceedings, oral argument on plaintiff's and defendants' motion shall be held at 11:00 a.m. on 12/4/98 (signed by Senior USDJ John T. Curtin) Notice and copy order sent to Joyce L.. Acomb, Jane B. Wolfe, Charles Bruce. Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R. Ippolito (jd) [Entry date 11/04/98]

11/30/98 74 MOTION by defendants Joyce L.. Acomb, Charles Bruce Acomb to Extend Time to file a motion (jd) [Entry date 11/30/98]

12/2/98 75 ORDER granting Acomb defendants [74-1] motion to extend Time to file a motion, defendants shall be given until 12/3/98 to file their motion, the oral argument set. for 12/4/98 is adjourned to 9:30 a.m. on 12/11/98 (signed bySenior USDJ John T. Curtin) Notice and copy of order sent to Joyce L.. Acornb, Jane B. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski First-McNess Co., Henry R. Ippolito (jd)[Entry date 12/02/98]

12/9/98	76	AFFIDAVIT by defendants Joyce L.. Acomb, Charles Bruce Acomb in support of [61-1] motion to Dismiss for failure to prosecute AND in support of amendment. of answer (jd) [Entry date 12/09/98]
12/11/98	--	Minute entry: oral argument held on [51-2] motion for summary judgment, submitted. JTC (jd) [Entry date 12/16/98]
2/10/99	77	TRANSCRIPT of motion hearing held before Judge Curtin for dates of 12/11/98, pages 1-49. (jd) [Entry date 02/10/99]
9/1/99	78	AFFIDAVIT of Nancy New re: amount due. (mj) [Entry date 09/01/99]
9/14/99	79	ORDER plaintiffs [51-1] motion for summary judgment is granted and defendants Counterclaims and third part.y complaint are dismissed, all other motions pending in this matter are dismissed as moot and judgment shall be enteredfor the plaintiffs (signed by Senior USDJ John T. Curtin) Notice and copy of order sent to Joyce L.. Acomb, Jane B. Wolfe, Charles Acomb, Andrew J. Weidman, David A. Shults, Joseph J.. Gumkowski, First-McNess Co., Henry R. Ippolito (jd) [Entry date 09/14/99]

Proceedings include all events. APPEAL clos99
1 : 97cv22 USA v. Acomb, et al TR- IN

9/14/99 80 JUDGMENT for plaintiff USA against defendants (Clerk)Notice and copy of judgment sent to Joyce L. Acomb, JaneB.Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R.Ippolito (jd) [Entry date 09/14/99]

9/14/99 -- Case closed (jd) [Entry date 09/14/99]

10/6/99 81 JUDGMENT OF FORECLOSURE AND SALE for plaintiff USA againstJoyce L. Acomb, et al., (signed by Senior USDJ John T. Curtin) Notice and copy of sent to Joyce L. Acomb, JaneB. Wolfe, Charles Bruce Acomb, Andrew J. Weidman, David A. Shults, Joseph J. Gumkowski, First-McNess Co., Henry R.Ippolito (jd) [Entry date 10/06/99]

10/12/99 82 NOTICE OF APPEAL by Joyce L.. Acomb, Charles Bruce Acomb.Fee Status: Paid $105.00 (copy to J. Wolfe, A. Weidman, D Shults, J. Gumkowski, First-McNess Co., H. Ippolito, and to Clerk, USCA, with copy of docket entries) (dr)[Entry sate 10/19/99]

10/19/99 -- Certified and transmitted record on appeal to U.S. Court of Appeals: [82-1] appeal by Charles Bruce Acomb, Joyce L. Acomb (dr) [Entry date 10/19/99]

EXHIBIT II

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

INDEX NO.
97-CV-0022C(Sc)

vs

MOTION FOR AMENDMENT

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acornb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C, D, E, F.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB.
Plaintiffs,

INDEX NO. 97-CV-0022C(Sc)

vs

MOTION FOR AMENDMENTOF AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA);
WILLIAM E. HUMPEREY; PAUL DENDIS; CHARLES VOLSING; PIERRE LABOIJRDETTE; CHRISTOPHER TAFFE; JUDGE DAVID G. LARIMER; JUDGE MICHAEL A. TELESCA; and John Does and Mary Roes,
Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Affirmative Defense and Counterclaim for the following reasons:

1. The defendants status as non-learned, non-lawyer litigants, are at a severe disadvantage in organizing and implementing all of the necessary information in a normal time frame.

2. Defendants would be stifled in exercise, of their right to access this Court if relief is not granted.

3. As the Court well knows, when even a competent lawyer is Shepardizing different cases he or she finds new revelations.

4. Example: We should have known that each defendant should have been served individually, but we either forgot or didn't know. I, Charles B. Acomb, did realize this after we filed the Amended papers, but it was then too late.

5. We knew that a number of C.F.R. Rules had been ignored by the government agents, but did not have time or realize they should have been implemented in the counterclaim.

6. We did realize that to give ourselves the best defense, we would have to have access to the complete file kept by the Livingston County FmHA Office.

7. We have had time to review the complete file and have made new discoveries. It seems that government agents knew full well that they could not indict Joyce L. Acomb for conversion at any time. They asked Joyce L. Acomb to plead guilty to a felony prior to a civil trial in Judge Telesca's Court. We wish to add this information to our Amended Answer and Affirmative Defense and Cross Claim.

8. While looking through other cases filed in Rochester Federal Court, we noticed something nobody else mentioned, time limitation. We wish to argue as a defense the following:

A. The claims set forth herein are barred by applicable statutes of limitation.

B. The alleged right of action set forth in the Complaint did not accrue within six years before the commencement of this action.

9. We ask the Honorable Court to allow us to name specific people in our Amended Answer and Cross-Claim, because in regard to fraudulent concealment, one must argue with specificity. The Appellate Courts demand names, specific time, place etc.

10. We have not sent the file to a person in Arizona yet because of money problems.

11.We were able to get copies of papers given to the Independant Review Team, by the Syracuse, NY office. An employee of Fm-HA is telling the Independant Review Team that Joyce L. Acomb had been indicted. This is a violation of her Civil Rights, and we wish to add this abuse to our Amended Answer.

12. It is our prayer that the Honorable Court will allow us to make these changes in the interest of justice.

13. Please find as EXHIBIT A, copy of Court Order signed by the Honorable Judge John T. Curtin, on Novermber 24, 1997.

14. We pray that the Honorable Court take into consideration the United States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While Gillispe v Civilette, 629 F2 637 (1980), and Haines v. Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion, we again pray that the Court still grant us relief

DATED: December 8,1997 Dansville, NY

Charles B. Acomb

Joyce L. Acomb

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof; the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief; and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. *63* N.
Dansville, NY 14437
Tel:.(716) *335-6804*

Sworn to before me this
8th day of December, 1997

NOTARY

DEBRA G. GOODELL, NOTARY PUBLIC
State of N.Y., County of Livingston
My Comm. Expires June 30, 1998

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe, Esq.
Assistant US Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 8th day of December, 1997.

Charles B Acomb

EXHIBIT III

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMIERICA,
Plaintiff;

INDEX NO.
97-C V-0022C(Sc)

vs

MOTION FOR AMENDMFNT

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acornb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through *32, 34, 37* and *39* through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C,D,E,F.

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief~ and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. 63 N.
Dansville, NY 14437
Tel: 716) 335-6804

Sworn to before me this
11th day of December, 1997

NOTARY

DEBRA G. GOODELL, NOTARY PUBLIC
State of N.Y., County of Livingston
My Comm. Expires June 30,1998

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB
CHARLES B. ACOMB,
Plaintiffs,

INDEX NO.
97-C V-0022C(Sc)

vs

MOTION FOR AMENDMENT OF AMENDED AFFIRMATIVE DEFENSE AND CROSS-CLAIM

UNITED STATES OF AMERICA; FARMERS HOME ADMINISTRATION(FmHA); WILLIAM E. HUMPHREY; PAUL DENDIS; CHARLES VOLSING; PIERRE LABOURDETTE; CHRISTOPHER TAFFE; JUDGE DAVID G. LARIMER; JUDGE MICHAEL A. TELESCA; and John Does and Mary Roes,

Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Answer, Affirmative Defense and Cross-Claim, for the following reasons:

1. On November 24, 1997, the Honorable Judge John T. Curtin, gave us leave to renew this motion after Settlement Proceedings have been concluded. See EXHIBIT A.

2. We did send this motion through the US Mail on Monday, 12/08/97. We then got a call from Jane, a District Court employee, stating that we should have a signature after the first page, and or, the Motion for Amendment of the Answer. We have chosen to revise that particular paper.

3. We have had time to review the complete file and have made new discoveries. US Assistant District Attorneys had compelled Joyce L. Acomb to appear in front of Magistrate Fisher in Rochester, NY, then fingerprinted her, took her picture and charged her with conversion without an indictment. In the file is a letter wherein the US Attorney states that they could not even successftilly prosecute Joyce or get an indictment, We

want to add this information to the Amended Answer, Amended Affirmative Defense and Cross-Claim. See EXHIBIT B.

4. While checking another Foreclosure Case in Rochester District Court, we discovered information in their Answer that we should use in our Amended Answer. In Case No. 97-C V-6272T, as a defense they state:

A. The claims set forth herein are barred by applicable statutes of limitation.

B. The alleged right of action set forth in the complaint did not accrue within six years before the cominencement of this action. See NY State law attached, EXHIBIT C.

5. We were able to get copies of papers given to the Independant Review Team by the Syracuse, NY office. An employee of FrnHA is telling the Independant Review Team, that Joyce L. Acomb has been indicted and that "All discrimination issues were resolved in legal decisions". This is a false statement. See EXHIBIT D. This is a violation of her civil rights, and we wish to add this abuse to our Amended Answer.

7. To support our statement that there was severe civil rights violations, please review EXHIBIT E.

8. The defendants status as non-learned, non-lawyer litigants, are at a sevcre disadvantage in organizing and implementing all of the necessary information in a normal time frame.

9. Defendants would be stifled in exercise of their right to access this Court if relief is not granted.

10. As the Court well knows, when even a competent lawyer is shepardizing different cases, he or she finds new revelations.

11. Example: We should have known that each defendant should have been served individually, but we either forgot or didn't know. I, Charles B. Acomb, did realize this after we filed the amended papers, but it was then too late.

12. We knew that a number of C.F.R. Rules had been ignored by the government agents, but did not have time or realize they should have been implemented in the Cross-Claim.

13. We did realize that to give ourselves the best defense, we would have to have access to the complete file kept by the Livingston County FmHA Office.

14. It is our prayer that the Honorable Court will allow us to make these changes in the interest of justice.

15. We pray that the Honorable Court take into consideration the United States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While Gillkpie v Civilette, 629 F2 *637* (1980), and Haines v. Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion, we again pray that the Court still grant us relief

DATED: December 11, 1997.
Dansville, New York

Charles B. Acomb

Joyce L. Acomb

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof; the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief; and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. 63 N.
Dansville, NY 14437
Tel: (716) 335-6804

Sworn to before me this
11th_day of December, 1997

NOTARY

DEBRA G. GOODELL, NOTARY PUBLIC
State of N.Y., County of Livingston
My Comm. Expires June 30,. 1998

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe, Esq.
Assistant US Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 11th day of December, 1997.

Charles B. Acomb

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

97-C V-0022C(Sc)

vs

JOYCE L. ACOMB and
CHARLES BRUCE ACOMB,
Defendants.

Pending is defendants motion to amend the answer (Item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: November 24, 1997

EXHIBIT B

United States Department of Agriculture
Farmers Home Administration
James Hanley Federal Bldg.
Room 871, P.O. 7318
100 South Clinton Street
Syracuse, N. Y. 13261-7311

October 16, 1991

County Supervisor, FmHA
Leicester, New York

SUBJECT: Joyce Acomb
OIG Investigation

Attached is a copy of a memo from OIG that the U.S. Attorney has declined prosecution. Based on the facts in our file , it appears that these loans h ave been acce1erated. Therefore, the next step is to proceed with Step 2 of the Foreclosure Checklists and forward this case to your District Director. He will then forward this case to us so we can refer it to the U. S. Attorney.

PIERRE L. LABOURDETTE

State Director

cc: Liaison Officer, FmHA
RegionalAttorney,OGC
AIG/IWashington,D.C.
OIG, New York, NY
Farm Program

Date: October 8, 1991

Reply to
Attn of: NY-421-44

Subject: Joyce L. Acomb, Dansville, NY
Unauthorized Disposition of FmHA Property

To: Pierre L. LaBourdette
State Director
Farmers Home Administration
Room 871, Federal Building
100 South Clinton Street
Syracuse, NY 13260

Christopher V. Taffe, Assistant United States Attorney, western District of New York, has declined prosecution of Joyce Acomb. Attached is a copy of AUSA Taffe 's letter outlining his reason for the declination. Please inform this office and all other distributees shown below of any administrative or other actions taken as a result of this investigation.

JOSEPH J. YARRISH
Regional Inspector General
for Investigations

Attachment
cc: Liaison Officer, FmHA
Regional Attorney, 0GC
AIG/I, Washington, DC

U.S. Department of Justice

October 3, 1991

Brian Chmura
Special Agent
Office of Inspector General
U.S. Dept. ofAgriculture
26 Federal Plaza, Rm 1707
New York, NY 10278

Re: Joyce L. Acornb

Dear Brian:

The purpose of this letter is to formally provide you with the reasons, which we have previously discussed, upon which the declination of the above-captioned matter is based. I have stated to you in the past that this case has been extensively considered by this office and this office has determined that no prosecution will be undertaken. I have also assured you that this decision is not a reflection on your investigation which was done in a thorough and professional manner. Rather, due to extraneous circumstances, the case has become riddled with problems and the likelihood of success at a jury trial is very poor. I will *review* the reasons below, not necessarily listed in priority of importance.

By memorandum dated November 30, 1987, you forwarded a recommendation for prosecution against Joyce Leah Acornb for the unlawful disposition of FmH.A security property pursuant to Title 18, United States Code, Section 658. As I have indicated, the investigation was complete and performed in a professional and competent manner. Nonetheless, there are proof problems related to the identification of the targets by the employees of the livestock companies that would be a hindrance to a successful prosecution. The identification of

the targets, by means of identifying who presented the hogs for sale, as well as the identification of the signatures on the various documentary evidence (checks, loan documents) is sufficiently in question to create a question with respect to a successful prosecution. Further, proof that the hogs sold were subject to an FmHA security agreement is also lacking.

The first point leads into the second point which is the age of the case. It was forwarded to us in November of 1987, but a combination of factors lead to the case becoming stale. Among these factors are the ongoing civil action which was allowed to preceed the criminal case in pursuit of a global settlement; the limited resources of this office which required several transfers of the investigation within this office; and, your brief hiatus with the National Guard. The age issue also raises the fact than the statute of limitations has run on most of the counts.

A related area to the problems with the proof in the case concerns the Utilization of William Humphrey, County Supervisor, as a primary, Government witness. Unfortunately, there was no way around Presenting the case without offering the testimony of William Humphrey. And, due to the fact that Mr. Humphrey's testimony was substantially discredited by Judge Michael Telesca in the civil action, use of Humphrey's testimony in the prosecution of this case created a serious problem. As we discussed, it would be essential for Mr. Humphrey to testify because he is the only one that would be in a position to disctss the fact that these loans were actually given to Joyce Acomb. Even if we did not call Mr. Humphrey, the defense most likely would have called him and would have been in a position to create similar problems as they did in the Civil action.

An additional factor we considered was the fact that your analysis of the bank records revealed that substantially all of the money that was obtained through the conversion of the hogs went back into the farming business. There is very little indication that the Acomb's benefited financialiy from this conversion other than allowing the business to continue. There are no expensive car or fancy house purchases that would add some jury appeal to the case.

Another factor is the potential defense being raised by the defendant relating to the moratorium placed on the collection. activity of the Farmers Home Administration in the Coleman v. Block action. The existence of this moratorium creates the potential for serious jury question concerning Acomb's intent to defraud the Government, in view of the confusion created by that moratorium. Based on my review of the correspondence submitted by Joyce Acomb, it appears that such a defense is quite likely to be raised and is viable.

Finally, given the fact that the United States lost its civil action against Joyce Acomb, there is the potential for a charge of vindictiveness against the Government in bringing this subsequent criminal action. While it is something that, in and of itself is not a reason to decline prosecution, it is one factor that cannot be ignored.

I wish to again assure you that this office does not consider the conduct of Joyce Acomb as being lawful. Quite the contrary, given the amount of money that Joyce Acomb ultimately obtained. It is clear that she was not doing something that was in accordance with proper legal standards. The point that we had to address in our review is whether we can prove a criminal case against her. we do not believe we can and that decision is in no way a reflection upon your excellent investigation. Although we discussed this case quite extensively, if you have any questions, I would expect that you will call me.

Sincerely,

DENNIS C. VACCO
United States Attorney

CHRISTOPHER V. TAFFE
Assistant United States

CVT:sw

EXHIBIT C

of this action, and this action to redeem from the mortgage is barred by the statute of limitations.

§ 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud

The following actions must be commenced within six years:
1. an action for which no limitation is specifically prescribed by law;
2. an action upon a contractual obligation or liability express or implied. except as provided in article 2 of the uniform commercial code;
3. an action upon a sealed instrument;
4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;
5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;
6. an action based upon mistake:
7. an action by or on behalf of a corporation against present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to properry or for an accounting in conjunction therewith.
8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the

plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

HISTORY:

Add. L 1962, ch 308. eff Sept 1, 1963.
Section heading, amd. L 1975, ch 43, eff Sept 1, 1975.
Sub 2, amd. L 1966, ch 138, eff Sept 1, 1966.
Sub 6, amd, L 1965, ch 248, eff Sept 1, 1965.
Sub 7, formerly sub 8, renumbered 7, L 1975, ch 43, eff Sept. 1, 1975
Former sub 7, repeated, L 1975, ch 43, eff Sept. 1, 1975.
Sub 8, formerly sub 9, add, L 1965, ch 248, amd, L 1963. ch 532, Sec. 5, renumbered sub 7, L 1975, ch 43, eff Sept 1, 1975.

NOTE:

Laws 1963, ch 532. made two types of changes; first, some provisions were designed to correct the typographical errors which existed in thc CPLR. Second, other provisions incorporated into the CPLR, without any change in substance, all pertinent amendments to the C.P.A. which were passed and approved during the 1962 legislative session. In this connection, only changes in language were made to conform to the style and format of the CPLR. Those C.P.A. amendments of 1962 essentially covered by original provisions of the CPLR. and those C.P.A. amendments pertaining to areas transferred on September 1, 1963, to laws other than the CPLR, were not incorporated into this act.

[1975] Subdivision 7 of § 213 or the civil practice law and rules. hereby repealed.. limited the time within which to commence an action to establish a will.

Earlier statutes: CPA §§ 47—49, 53, 1226; CCP § 380, 381, 388, 1973: Code Proc §§ 74, in part, 89, 97, 382.

EXHIBIT D

2/19/97
SUMMARY

The Acombs have indicated in letters prior to their pro se lawsuit and in their pro se lawsuit, that their civil rights were violated, that there was fraud by the agency and that there was discrimination. These issues were all dismissed with the lawsuit and upheld by the Appeals Court. After a warning, sanctions were imposed in favor of the government.

All servicing was offered by the agency, (?) through the U. S. Attorney (?)Mr. Subsequently, the discrimiination issues in the foreclosure complaint refer to a criminal indictment. The criminal case was dropped as a result of a decision against FmHA in an ASCS civil case.

This case was handled in accordance with direction by the U. S. Attorney's Office for servicing. **All discrimination issues were resolved in legal decisions.**

Nancy F. Neu
Programs Division Director
5/7/97

EXHIBIT E

App. 86

U. S. Department of Justice

United States Attorney
Western District of New York

August 29, 1990

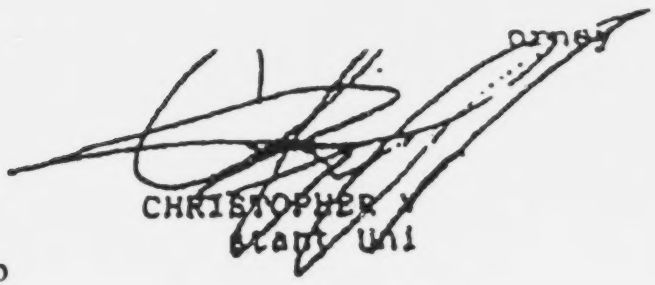
Joyce Leah Acomb
Rt. # 1
Dansville, NY 14437

RE: United States v. Joyce Acomb

Dear Mrs. Acomb:

Enclosed please find the letter dated August 24, 1990 regarding the above-captioned case. This letter indicates that. you are no longer represented by Mr. LaTona. Please advise me no later than September 7, 1990 who is representing you. If I do not hear from you by that date this case will be presented a federal grand jury, and you will be indicted.-

Very truly yours,
DENNIS C.
VACCO
United States Attorney



CVT : bjp

Enclosure

EXHIBIT IV

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

-vs- **9 7-CV-0 0220C(S c)**

JOYCE L. ACOMB and CHARLES BRUCE ACOMB,

Defendants.

The application of the United States to extend the time to file its motion for summary judgment and to respond to the Acombs motion for amendment is extended until December 1, 1997. This will also extend the time of the Acombs to respond to the United States' motion for summary judgment by 30 days. This stay will also extend the time of the United States to respond to the Acombs' motion to add third-party defendants for 30 days, until December 17, 1997.

In other words, everything will be stayed pending the report from the United States Department of Agriculture's Independent Review Team.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: October,31 ,1997

EXHIBIT V

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

-vs

97-C V-0 022 C (Sc)

JOYCE L. ACOMB and
CHARLES BRUCE ACOMB,
Defendants.

Pending is defendants' motion to amend the answer (Item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated : November 24, 1997

EXHIBIT #3

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

USA,

Plaintiff—Appellee,

Docket No
99-6308

-v-

AFFIDAVIT IN OPPOSITION TO MOTION FOR STAY OFTHE PROCEEDINGS

ACOMB,

Defendants—Appellants.

State of New York)
County of Erie) ss
City of Buffalo)

JANE B. WOLFE, being first duly sworn, deposes and says:

1. I am an Assistant United States Attorney employed in the office of the United States Attorney for the Western District of New York, at Buffalo and am familiar with the pleadings and proceedings herein.

2. The assertions provided in the present affidavit are based upon the records and information in my possession and to the best of my knowledge, information and belief are true and correct.

3. By Motion dated January 10, 2000, Charles B. Acomb, pro se has moved this court on behalf of himself and Joyce L. Acomb for an Order staying the proceedings because two motions to amend their answer allegedly filed on December 9, 1997 and December 11, 1997 do not appear on the District Court's docket.

7. On December 29, 1997, the Acombs filed an Amended Amended Answer in District Court Clerk's Office in Rochester. See Acombs' Exhibit 1, Docket # 54.

8. On January 27, 1998, the Acombs filed another Amended Amended Answer in District Court Clerk's Office in Rochester. See Acombs' Exhibit 1, Docket # 55.

9. On August 31, 1998, the Acombs filed another Motion for Amendment of Answer, Affirmative Defense and Counterclaim. Attached to this motion is the Acombs January 27, 1998 Amended Amended Answer. Docket No. 62. A copy of the Motion and the Court's September 15, 1998 Order are attached as Exhibits B and C, respectively.

10. This motion for amendm ent was addressed by the United States in responding papers and was ultimately denied by the District Court as moot in the Memorandum and Order entered on September 14, 1999. A copy of the memorandum and Order is attached as Exhibit D. See Exhibit D, Introduction.

11. This is an appeal from the Decision and Order and Judgment of Foreclosure and Sale entered by the Honorable John T. Curtin, which dismissed the Acornbs' counterclaims and third-party

complaint and granted the United States' Motion for Judgment of Foreclosure and Sale.

12. The issues on appeal are whether Judge Curtin properly dismissed the Acombs counterclaims and third-party complaint and whether Judge Curtin properly granted the United States Motion for Summary Judgment in light of the motion to amend.

WHEREFORE, the United states respectfully requests that this Court deny the Acombs' motion for stay of the proceedings because the Acombs subsequent Motion for Amendment was ruled on by the District Court, thus there has been no prejudice to the Acombs.

JANE B. WOLFE

Subscribed and sworn to before me
this 28th day of January 2000.

NOTARY PUBLIC

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

USA V. ACOMB

99-6308

The undersigned hereby certifies that she is an employee of the United States Attorney's Office for the Western District of New York and is a person of such age and discretion as to be competent to serve papers.

That on January 28, 2000, she served a copy of the attached AFFIDAVIT IN OPPOSITION TO MOTION FOR STAY OF THE PROCEEDINGS by placing said copy in a post-paid envelope addressed to the person hereinafter named, at the place stated below, which is the last known address, and. by depositing said envelope and contents in the United States mail at 138 De1aware Avenue, Buffalo, New York 14202.

ADDRESSEE(S)

Charles B. Acomb and Joyce L. Acornb
8317 State Rt. 63 N.
Dansville, New York 14437

CHERYL A.
KINMARTIN

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Defendants.

INDEX NO. 97-CV-0022C(Sc)
MOTION FOR AMENDMENT

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge of information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C, D, E and F.

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Plaintiffs,

vs

INDEX NO. 97-CV-0022C(Sc)

MOTION FOR AMENDMENT OF ANSWER AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA; FARMERSHOMEADMINISTRATION(FmHA);WILLIAM E. HUMPHREY; PAUL DENDIS; CHARLES VOLSING; PIERRE LABOURDETTE; CHRISTOPHER TAFFE; JUDGE DAVID G. LARIMER JUDGE MICHAEL A. TELESCA; and John Does and Mary Roes,

Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Affirmative Defense and Counterclaim for the following reasons:

1. The defendants status as non-learned, non-lawyer litigants, are at a severe disadvantage in organizing and implementing all of the necessary information in a normal time frame.

2. Defendants would be stifled in exercise of their right to access this Court if relief is not granted.

3. On November 24, 1997, the Honorable Judge John T. Curtin, filed an

Order stating:

> Pending is defendant's motion to amend the Answer (item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

4. To this day we never understood what was specifically meant by "settlement proceedings".

5. What we did interpret it to be, was that we could sometime later file the Amended, Amended Answer and the Amended, Amended Affirmative Defense and Counterclaim. The words "with leave to renew", alluded to this interpretation.

6. Please find copy of Order of November 24, 1997, as Exhibit # 1.

7. The government insisted on making things so difficult for the Acombs to meet their financial responsibilities, that in the interest of justice we must be allowed to litigate each and every item mentioned in the Amended Affirmative Defense and Counterclaim. Please note Exhibit #2, copy of Amended Answer and Amended Affirmative Defense and Counterclaim.

8. We pray that the Court will allow us to serve each defendant in our Counterclaim individually.

9. We pray that the Honorable Court take into consideration the United .States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While Gillispie V Civilette, 629 F2 *637* (1980), and Haines v. Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion, we again pray that the Court still grant us relief.

10.. Defendants pray that the Honorable Court will grant our petition.

DATED: August 31, 1998
Dansville, NY

_____
JOYCE L. ACOMB

_____
CHARLES B. ACOMB

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof, the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

_____
CHARLES B. ACOMB

_____
JOYCE L. ACOMB
8317 State Rte. 63 N.
Dansville, NY 14437
Tel: (716) 335-6804

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion, in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe
Assistant US Attorney
Western District of New York
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

on this 31st day of August, 1998

CHARLES B. ACOMB

EXHIBIT # 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff.

vs

97-CV-0022C(Sc)

JOYCE L. ACOMB and

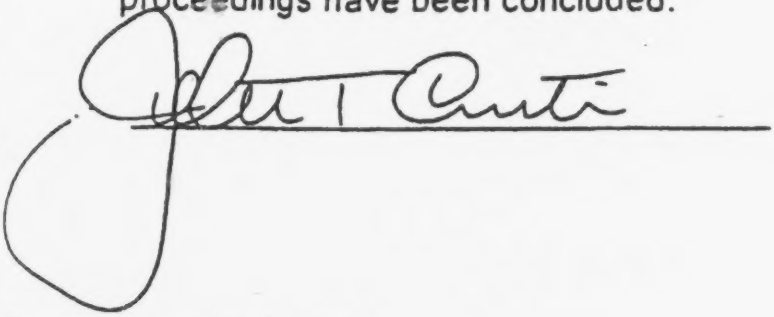
CHARLES BRUCE ACOMB,

Defendants.

Pending is defendants' motion to amend the answer (Item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

So ordered.

JOHN T. CURTIN
United States District Judge
proceedings have been concluded.



Dated: November 24 1997

EXHIBIT # 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff;

vs

INDEX NO.
97-C V-0022C(Sc)

AMENDED
AMENDED
ANSWER

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

AMENDED ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

FIRST AFFIRMATIVE DEFENSE

1. Admits paragraphs 1 through 10, 12 through 21, *23* through 26, 28 through 30, 32, *34,* 37 and *39* through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 11, 22, 27, 31, *33, 35,* 36, *38* and 49 A, B, C, D, E and F.

SECOND AFFIRMATIVE DEFENSE

3. The complaint fails to state a claim against the defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

4. The claims set forth herein are barred by applicable statutes of limitation.

5. The alleged right of action set forth in the complaint did not accrue within six years before the commencement of this action.

FOURTH AFFIRMATIVE DEFENSE

6. Upon information and belief the plaintiff has not complied with applicable !aw, rules and standard operating procedures with respect to the loans in question and has not granted to the debtors forbearance, modifications and restructuring to which they are entitled pursuant to applicable law, regulations and standard operating procedures of the Farmers Home Administration. As such, plaintiff has denied the defendants the equa! protection and treatment to which they are entitled under applicable !aw.

FIFTH AFFIRMATIVE DEFENSE

7. Plaintiff has not complied with it's obligations under the New York Uniform Commercial Code with respect to its duty to act in good faith and deal fairly in the enforcement and exercise of its rights under the promissory notes in question.

WHEREFORE, the defendants respectfully request judgment dismissing the complaint herein with prejudice and direct the Farmers Home Administration to discharge of record all mortgages referred to in the complaint herein.

DATED: Dansville, New York
January 27, 1998

_____
Joyce L. Acomb

_____
Charles B. Acomb

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiffs,

AMENDED, AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

VS

INDEX NO. 97-CV-0022C(Sc)

UNITED STATES OF AMERICA; FARMERS HOME ADMINISTRATION (FmHA); WILLIAM E. HUMPHREY; PAUL DENDIS; CHARLES VOLSIING; PIERRE LABOURDETTE; CHRISTOPHER TAFFE; JUDGE DAVID G. LARIMER; JUDGE MICHAEL A. TELESCA; NANCY NEU and John Does and Mary Roes,

Defendants.

Plaintiffs come forward with Cross-Claim and Affirmative Defense praying for damages against those above named defendants.

PARTIES

1. Plaintiffs Joyce L. Acomb and Charles B. Acomb, are United States citizens, with an address of 8317 State Rte. *63* N., Dansville, New York 14437.

2. Defendant Farmers Home Administration is a creation of the United States government mandated to follow statute law as prescribed in complaint whose address is 129 Main Street, Leicester, New York 14481.

3. Defendant William E. Humphrey, is sued individually and is a United States citizen, with an address of: 129 Main Street, Leicester, New York 14481.

4. Defendant Paul Dendis is sued individually and is a citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202

5. Defendant Charles Volsing is sued individually and is citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202.

6. Defendant Pierre Labourdette is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

7. Defendant Christopher V. Taffe is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

8. Judge David G. Larimer is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York
14614

9. Judge Michael A. Telesca is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York
14614

10. Defendant Nancy Neu is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

I. PRELIMINARY STATEMENT

11. In 1978, the Acomb family farm received a loan from FmHA to improve and expand their building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach their immediate goal of selling three thousand finished hogs per year. The first year, 1978, there were 689 head sold for $80,231. In 1979, the numbers increased to 905 head for $90,112. In 1930, due to the shortage of money and increased number of animals sold, the Acomb's oldest daughter, Lori, came home to work on the farm. She had graduated from the Chamberlain School of Retailing, and was just promoted to Assistant Manager by the Ames Department Store at Arcade, NY. While receiving over $300 per week at that employment, she was paid by her mother, Joyce, $50 per week plus board for farm work. Their son Brent, who had started a career in the US Air Force, I think in 1973, came

home in 1980 on an early discharge at and worked for $50 per week and board. Their youngest daughter Renee, sometime later quit college and came home to work for the same pay. In 1980 the farm produced 1,569 market hogs for $148,139. In 1981 the production was 1968 animals for $187,842. The number increased again in 1982 to 2887 animals sold for $284,711.

Joyce L. Acomb, the owner and working manager of their farm, was the winner of the 1982 New York State corn growing championship that was conducted by the National Corn Growers Association. This was in the non-irrigated, Glass A section of the contest. The yield was 172.22 bushels per acre, or 4.82 tons per acre.

FIRST AFFIRMATIVE, DEFENSE AND COUNTERCLAIM

12. In 1980 and 1981, in addition to the FmHA loans, Joyce L. Acomb received Farm Storage loans from the Commodity Credit Corporation (CCC). The 1980 loan was being paid off through monthly payments that "'as agreed on between the two parties. In 1981, the same procedure was followed. Mr. William E. Humphrey, the FmHA Livingston County Supervisor in 1981, would not allow the 1981 CCC note to be paid. Mr. Humphrey also told Joyce L. Acomb, that if she did complete the CCC payments, he would liquidate her. Mr. Hauryski, the CCC supervisor, was informed of Mr. Humphrey's threat, and he told Joyce Acomb he would have to sue her. Joyce Acomb reported this conversation back to Mr. Humphrey who said, "So what, let him sue". Years later we found Out that an FmHA official, Mr. Paul Dendis, had suggested that FmHA pay CCC a pro-rated share of payments from the sale of hogs. We also found out years later that there was a Memorandum of Understanding between the two agencies. Mr. Humphrey's threat, "I will liquidate you", was a threat of a non-judicial foreclosure, which would be illegal. All of the FmHA officials knew of the Memorandum of Understanding. This constituted a breach of Fiduciary Duty. The Agency did not share

their knowledge with the farmers that there was a "Memorandum of Understanding". This was fraudulent concealment.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

13. On December 3, 1934, the Agricultural Stabilization and Conservation Service (ASCS) started a civil suit against Joyce L. Acomb to collect monies that Mr. Humphrey refused to allow her to pay. This could have been avoided but for the breach of fiduciary duty by the FmHA officials in Syracuse, NY and Harrisburg, PA. This civil suit automatically shut the door in regard to Joyce Acomb participating in any CCC programs until the suit would be settled. On December 3, 1984, the government officials should have instead admitted that there was a Memorandum of Understanding. They did not. This constitutes again fraudulent concealment.

THIRD AFFIRMATIVE DEFENSE AND COUNTERCLAIM

14. In the early months of 1985, Joyce L. Acomb was turned down in regard to an operating loan by Mr. Humphrey, the Livingston County Supervisor. She began the appeal immediately. On June 2, 1985, Joyce received a letter dated May 31, 1985 from William E. Humphrey stating:

> "This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.
>
> The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts."

Mr. Humphrey was in violation of rules in the Code of Federal Regulations. Failure to give proper notice, which was a violation of due process, and but not least, a violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota. On the last page of this court Order, Judge VanSickle states:

> It is further ordered that defendants John R. Block and Charles Shuman shall give notice to their agents, subordinates, and employees who are charged with implementing FmHA loans, of the contents of this order.

Sometime in 1994, we became aware of a memo by William E. Humphrey, that he had discussed this letter with Office of General Counsel (O.G.C.), Charles Volsing and Chief of Farm Programs (C.F.P.) Paul Dendis. They approved of this letter even though they discussed the Coleman Decision. All three officials agreed to be contemptuous of the Court Order. The FmHA officials were aware of the Federal Court Order, and they refused to share this knowledge with Joyce L. Acomb. This is fraudulent concealment. At least three FmHA officials agreed to violate a Court Order. This is fraud and conspiracy. On information and belief, no other FmHA borrower received a letter demanding all of the proceeds. This is blatant discrimination because Joyce L. Acomb is a woman. It is also a violation of Equal Protection of the Laws.

FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

15. Sometime in October 1988, Joyce L. Acomb was served a summons in a criminal case. She had to appear in Rochester, NY in front of US Magistrate; Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

The following day, October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating:

DANSVILLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL

> A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.
>
> Joyce Acomb of 83 17 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.
>
> Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October 1987.

This charge came about because William E. Humphrey complained to his superiors that Joyce L. Acomb insisted on continuing doing business by selling animals and refusing to give him all the money that he demanded in his letter to her of May 31, 1985. This serious charge came about only because the government officials were involved in fraud and conspiracy, fraudulent concealment, discrimination etc.

FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

16. Joyce received a threatening letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury.

On August 31, 1990, Joyce received another threatening letter from Assistant US Attorney, Christopher Taffe. These threatening letters arrived at Joyce L. Acomb's house only because of previous discrimination, fraud and conspiracy, fraudulent concealment, breach of fiduciary duty etc.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

17. On information and belief; sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, NY. there was to be a pre-trial conference on September, 17, 1 990. Charles B. and Joyce L. Acomb arrived with Joyce's lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's courtroom and waited. Soon Assistant US Attorney, Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyer, William Muoio, came out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Acomb very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity

whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest. The trial began on 9/18/90 and a decision was recorded on September 25, 1990, stated as follows:

> IT IS ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint. is dismissed

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

I8. Joyce received a letter dated October 4, 1990, from her lawyer and he stated:

> Dear Joyce:
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Again we have another threatening letter that is completely discriminatory. We are told that we have to pay an attorney to fight the government appeal of Judge Telesca's decision. Then the government submits a Voluntary Dismissal, on file in the US Court of Appeals.

EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

19. On or about March 4, 1991, Charles B. and Joyce L. Acomb, appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan: Dear Mr. Acomb: I sent your inquiry to the appropriate Executive Agency and they have produced the enclosed

response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator. ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security. Because this case is before the Court, we cannot comment on it at this time. We hope you find this information helpful in responding to your constituent. Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home Administration, Washington, DC. The information given to a United States Senator was false, and was perjury. All of the decisions by the governmental employees were causing extreme emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

NINTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

20. In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb's face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca's Court on February 20, 1992, asking for a complete trial transcript of case #CIV-84-1389T, United States v. Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that.

much. Laughed and said, "You will be able to see what Judge Telesca says". Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in 1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have $550 before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995.

The Acombs' have telephone records showing that they had tried to consummate an agreement with a member of Judge Telesca's Court in regard to preparing a complete record for Case No. CIV-84-1389T. In the year 1992, we made calls to a member of Judge Telesca's Court, and or, the Clerk's Office on 03/03/92, 03/04/92, 03/05/92 and 12/08/92. In the year 1993, we made calls on 02/24/93 @ 8:58 A.M., 02/24/93 @ 9:00 A.M., 03/02/93, 04/10/93, *04/12/93,* 04/14/93 @ 9:09 A.M., 04/14/93 @ 10:20 A.M., 04/20/93, *04/23/93* @ 9:31 A.M., *04/23/93* ~ 9:59 A.M., 04/26/93, 08/02/93, 08/11/93, *09/27/93,* 09/28/93, *12/16/93* @8:55 A.M. and *12/16/93* @9:14 A.M. In the year 1994, we made calls on 05/04/94, 09/06/94, 09/08/94, 09/14/94, 09/20/94 and 12/23/94. In the year 1995, we made calls that were within Opta-Call, which is a grouping of numbers not identified. This is a money saving option through our telephone service. Consequently, we have no individual records during 1995.

On information and belief Judge Telesca is responsible in regard to the conduct and work ethics of all of his Federal Court personnel.

On information and belief Judge Michael A. Telesca has refused to allow any farmers in his district to present evidence in any, and all, individual cases.

We take the position that there has been fraud and conspiracy, malfeasance, nonfeasance, obstruction ofjustice, discrimination, and that their misconduct created severe emotional distress and a denial of due process. This is also fraudulent concealment.

TENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

21. Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bivens Action" we were supposed to be able to present evidence. This was a denial of due process and equal protection of the law.

ELEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

22. It is a fact that in *1983* there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was *3637.* That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the government agents that worked against her, her farm could have produced the following. In 1986, *36* farrowing stalls were added on the Florence J. Carney farm.

YEAR	*# OF STALLS*	*PIGS BORN PER STALL*	*TOTAL*
Actual 1983	*52*	*69.9*	*3,637*
Projected 1987	*88*	*69.9*	*6,151*
Projected 1988	*88*	*62.5*	*5,500*
Projected 1989	*88*	*65.0*	*5,720*
Projected 1990	*88*	*69.9*	*6,151*
Projected 1991	*88*	*62.5*	*5,500*
Projected 1992	*88*	*65.0*	*5,720*
Projected 1993	*88*	*69.0*	*6,072*

Projected 1994	*88*	*62.0*	*5,456*
Projected 1995	*88*	*65 0*	*51720*
Projected 1996	*88*	*64.0*	*5,632*
		TOTAL ANIMALS	57,622

If there had been support when the FmHA agents knew the family worked very hard, produced top quality animals and sacrificed to expand the operation, these figures would be very realistic, possibly even better. Joyce L. Acomb could have paid her creditors, could have purchased her mother-in-law's life estate (Florence J. Carney) that sold at a very low price in approximately 1991.

TWELVETH AFFIRMATIVE DEFENSE

23. On 01-27-89, William E. Humphrey refused again to sign any papers that would allow Charles B. Acomb and Joyce L. Acomb any relief He also claimed we diverted large amounts of money to our own use, which was and is a false statement.

THIRTEENTH AFFIRMATIVE DEFENSE

24. While inspecting our case file in the US Attorney's Office in 1997, we discovered a document, a letter addressed to Mr. Humphrey by Moses Garippa, a government contractor. It is dated July i 4, 1986. It seems that the Federal Government,

through Mr. Humphrey, contracted Mr. Garippa to make an independent analysis of the Acomb Farm and it's potential. The last paragraph is as follows:

> "This farm was successfull and profitable in the past, and with proper management and timely decisions, surely can be successful again." Signed by Moses Garippa.

This document was available to all of the FmHA agents, and they chose to ignore it. We did not have knowledge of this for years. Thus, this is fraudulent concealment, conspiracy etc.

FOURTEENTH AFFIRMATIVE DEFENSE

25. We discovered a letter by Christopher V. Taffe, dated October 3,1991, sent to a government investigator, in regard to charges of conversion. We read this for the first time in the US Attorney's Office in Rochester, NY, in 1997. US Attorney Christopher V. Taffe, is telling the investigator that they have no case against Joyce L. Acomb. Both of these men knew that all of the hog checks and monies were put into the one and only farm checking account. Attorney Taffe states:

> "There is very little indication that the Acombs benefited financially from this conversion, other than allowing the business to continue."

This charge was total discrimination, and their knowledge that was concealed, was conspiracy and fraudulent concealment.

FIFTEENTH AFFIRMATIVE DEFENSE

26. On 11/21/88, there was a memo to Mr. Humphrey from Nancy Neu which reads:

> From Nancy Neu- as per Dave Spader's instructions, do not send Joyce Acomb the former letter, Ex A. etc.
>
> W.E.H. 11/23/88.

It is our position that this is fraudulent concealment.

SIXTEENTH AFFIRMATIVE DEFENSE

27. Nancy Neu, Farmers Home Administration Program Division Director, is authoring a summary to the Independent Review Team in Washington, DC, dated at the top 2/19/97. She states:

> "The Acombs have indicated in letters prior to their pro-se lawsuit and in their pro-se lawsuit that their civil rights were violated, that there was fraud by the agency and that there was discrimination. These issues were all dismissed with the lawsuit and upheld by the Appeals Court. After a warning sanctions were imposed in favor of the government.

The fact is, that in that pro-se lawsuit the Acombs trusted Mr. Elliot in regard to any of the legal papers that were filed. We trusted that Mr. Elliot was correct in formulating the complaint etc. We found out later that Judge Larimer was correct in that the complaint asserted no individual fact and dates concerning various violations. In our

current cross-claim, we have all of the dates and information necessary for a successful litigation.

Later in the summary, Nancy Neu is alluding to a criminal indictment against Joyce L. Acomb. This is a totally discriminatory statement and misleading to the Independent Review Team.

SEVENTEENTH AFFIRMATIVE DEFENSE

28. William E. Humphrey and other agents, failed on many occasions to implement, or to point out to the Acombs numerous Code of Federal Regulations that would have given them a deferral. They are as follows: CFR Rule 1924.51, 1924.55, 1924.56, 1924.57 (b)(1), 1941.3, 1951.3 13 (A) (2), 1951.40 (b) (2), 1951.33 (a) (2), 195 1.33 (a) *(3),* 1951.40 (a) (1), and 7 USC 1981A. This was fraudulent concealment, discrimination, breach of fiduciary duty etc.

EIGHTEENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

29. Joyce L. Acomb had requested to review her file by letter to Andrew T. Muscarella, County Supervisor, on March *15,* 1991. He answered on March 20, 1991 and stated that it had been forwarded to the Freedom of Information Officer in our State Office, Syracuse, NY. He then stated I would have to pay copy costs which could be $200 - $300. We received an answer from State Director, Pierre L. La.Bourdette, dated June 26, 1991. He states, "We have reviewed your request and have determined this material should not be released to you at this time. This decision is based on 5U.S.C. 552a (D) *(5).*

We then replied by letter dated July 8, 1991, notifying the director that we were appealing the state decision. We received a letter from Joanne Shaw, Assistant Freedom of Information Officer, dated August 9, 1991. She states they have to evaluate reasons we were turned down by state office.

It is our position that any denial at all is discrimination and fraudulent concealment. Sometime later they allowed us to review part of the file. They charged us for each copy even though the charge is a violation of FmHA Instruction 2015-E.

NINTEENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

30. On information and belief, the C.F.R. Regulation, or directions as to how to file a Torte Claims Act, was removed from the C.F.R. in 1984. FmHA stated that the intended effect was simply to remove an unneeded regulation from the C.F.R. This was, and is, fraudulent concealment.

AGAINST ALL DEFENDANTS MENTIONED HEREIN

31. Fraud, conspiracy, discrimination, abuse of prosecution, denial of equal protection of the law, denial of due process, contractual interference, fraud in contract, wire and mail fraud, deliberate indifference, perjury, denial of interstate commerce, malfeasance, nonfeasance, obstruction of justice, personal threats, neglect of duty, breach of trust, false arrest and fraudulent concealment with specificity.

JURISDICTION

32. This Court has jurisdiction in this matter under 28 U.S.C. Sec. 1331, on the basis of federal questions raised as to violation of the rights of Joyce L. Acomb and Charles B. Acomb. Also, under 42 U.S.C. 1983, 1981, 1982, 1985 (2), (3), the Bivens doctrine, Bivens v *Six* Unknown Federal Agents, 403 U.S. 388, (1971) and 18 U.S.C.A. 1964 (c), 1962 *(3),* all violation of 4th Amendment 5th, 6th, 8th and 14th Amendments.

JURY DEMAND

33. Plaintiffs in this counterclaim complaint, Joyce L. Acomb and Charles B. Acomb, demand a jury for the trial of all issues and claims set forth in these claims which are triable by jury.

FIRST CAUSE OF ACTION

34. Plaintiffs repeat and realleges Paragraphs 1 through 33 as if set forth more fully herein.

35. By the acts described above, the defendants wrongfully and illegally refused to comply with any and all deferral regulations including 7 U.S.C. 1981 A. and Memorandum of Understanding. By the acts above, they violated their Fiduciary Duty.

SECOND CAUSE OF ACTION

36. Plaintiffs repeat and reallege Paragraphs 1 through 35 as if set forth more fully herein.

37. The government failed to follow the dictates of their own contractor who favored supporting the Acomb Farm enterprise.

38. By the acts described above, the Acombs lost their best market for selling farm animals.

39. By the acts above, they could not properly take advantage of planting Galney Farm's 239 acres or Joyce L. Acomb's 190 acres.

40. By the acts above, Joyce L. Acornb was falsely arrested.

41. By the acts above, Joyce L. Acomb received many heart wrenching, threatening letters from government agents.

42. By the acts described above, the Independent Review Team in Washington, DC was misinformed as to a number of facts.

43. By the acts above, the Acombs were denied a pretrial and trial transcript of trial within a reasonable time.

THIRD CAUSE OF ACTION

44. Plaintiffs repeat and reallege Paragraphs 1 through 43 as if set forth more fully herein.

45. By the acts described above, the government agents instilled fear in both Joyce L. Acomb and Charles B. Acomb in regard to making 44 farm oriented decisions.

46. By the acts described above, the Acombs had a fear of entering into any and all agreements with the Federal Government and or it's employees after May 31, 1985.

47. By the acts described above, the Acombs could not plant continuous corn as they had up to and through 1985.

FOURTH CAUSE OF ACTION

48. Plaintiffs repeat and reallege Paragraphs 1 through 47 as if set forth more fully herein.

49. Upon the acts described above, plaintiffs request that the Court award the plaintiffs reasonable attorney's fees and costs.

WHEREFORE, the Plaintiffs demand Judgment against the Defendants as follows:

1. On the first, second and third causes of action, compensatory damages against all defendants in the amount of 2 million dollars ($2,000,000.00.) with interest thereon as provided by law.

2. On the first, second and third causes of action, exemplary, and or, punitive damages in the amount of 18 million dollars ($18,000,000.).

3. On the fourth cause of action, reasonable attorney's fees for the costs and disbursements of this action, together with such other relief as the Court deems just and proper.

DATED: Dansville, New York
January 27, 1998

Respectfully submitted,

Joyce L. Acomb

Charles B. Acomb

EXHIBIT C

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

USA

Plaintiff (s)

vs **1 :97-cv-00022**

Acomb

Defendant (s)

PLEASE take notice of the entry of an ORDER filed on 9/14/99, of which the within is a copy, and entered 9/14/99 upon the official docket in this case. (Document No. 79 .)

Dated: Buffalo, New York
September 14, 1999

RODNEY C. EARLY,Clerk
U.S. District Court
Western District of New York
304 U.S. Courthouse
68 Court Street
Buffalo, New York 14202

Enclosure
TO:

Jane B. Wolfe, Esq.
Joyce L.. Acomb
Charles Bruce. Acornb
Henry R. Ippolito, Esq.
First-McNess Co.
Joseph J. Gumkowski, Esq.
David A. Shults, Esq.
Andrew J. Weidman, Esq.

United States District Court
Western District of New York

UNITED STATES OF AMERICA,

Plaintiff,

97-C V-0022C(Sc)

-vs-

JOYCE L. ACOMB and CHARLES BRUCE ACOMB,

Defendants.

DECISION
and
ORDER

CURTIN, District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs 97-CV-0022C(Sc)

JOYCE L. ACOMB and
CHARLES BRUCE ACOMB,
Defendants.

APPEARANCES:

DENISE E. O'DONNELL, ESQ.,
UNITED STATES ATTORNEY
(JANE B. WOLFE, ESQ.,
Assistant United States Attorney, of Counsel),
Buffalo, New York, for Plaintiff.

DEFENDANTS PRO SE.

INTRODUCTION

Before the court is plaintiffs motion for summary judgment and dismissal of defendants' counterclaims and third-party complaint. Item 51. Plaintiff also moves to strike defendants' amended answers (Items 54 and 55). Item 62. Defendants oppose and have filed their own motion to dismiss for failure to prosecute (Item 61), as well as a motion to file another amended answer. Item 67. For the reasons stated below, plaintiffs motion for summary judgment is granted, and defendants' counterclaims and third-party complaint are dismissed. As such, the remaining motions are moot.

BACKGROUND

I. Facts

In this action, plaintiff United States of America, acting through the Farmers Home Administration, is seeking to foreclose four real property mortgages on defendants' property. Additionally, plaintiff seeks to secure a security interest in the defendants' farm equipment.

Some general background is necessary to properly understand the context in which this case has come before this court. Defendants Joyce Acomb and her husband, Charles Bruce Acomb, currently occupy a farm located on Route 63, R.D. *#1*, in Dansville, New York. It is uncontested that in 1978, defendants embarked upon a plan to expand their farm into a hog enterprise. Item 58, ¶ 3. To fund this project, Mr. and Mrs. Acomb jointly obtained farm operating loans in the amounts of $40,000.00, $100,000.00, $206,40O.00, and $60,000.00 from the Farm Service Agency, formerly known as Farmers Home Administration ("FmHA'). Item 78. Each loan was evidenced by a promissory note, executed and delivered to FmHA by the Acombs, and secured by a real property mortgage covering the farm. Item 1.

In 1980, Mr. Acomb transferred all of his interest in the farm to Ms. Acomb. After the transfer of property, defendant Joyce Acomb executed and delivered three additional real property mortgages on the farm to FmHA as security for loans in the amounts of $8,500.00, $30,000.00, $130,000.001, $166,000.00, and $90,000.00. Items 1 and 78. All

[1]This loan was rescheduled in the amount of $146,515.93 on May 18, 1982.OMay 27, 1983, the loan was further rescheduled in the amount of $154,229.55. The reschedulings are evidenced by promissory notes with dates and amounts. These

four mortgages were filed in the Livingston County Clerk's Office and provide that the loan amounts will be repaid with interest at specified rates over a specified number of years.[2] Item 78.

In 1984, Ms. Acomb obtained another $100,000.00 loan from FmHA. As security for this loan, Ms. Acomb gave the FmHA a security interest in defendants' then-owned or thereafter-acquired equipment. Item 1. In total, three security agreements were executed and delivered to FmHA. Item 1, ¶ 42, Exhs T-X; see also Item 77, p. 6.

In addition to borrowing money from FmHA, Ms. Acomb also acquired farm storage loans from Commodity Credit Corporation ("CCC").[3] Item 58, ¶ ¶ 6-7. Farm storage loans allow farmers to pledge a specified quantity of an eligible commodity to CCC instead of selling it. Item 5, Exh. 15, ¶ 4. In exchange for the pledge, the farmers receive a cash loan. The pledged commodity is stored on the farm and cannot be removed or utilized until the loan is repaid with interest. 7 C.F.R. §§ 1412.18(a), 1421.17(g), 1412.19 (1982). In 1981, Ms. Acomb used her corn crop to secure a CCC loan. Id. While the hog farm substantially expanded in the early 1980s, the expansion failed to produce a financial profit. Between 1978 and 1981, the number of hogs on the farm doubled, yet defendants struggled to keep current with their FmHA and CCC loan

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notes represent a modification of, but not a replacement or payment of, the prior notes. Additional mortgages were given to secure the rescheduled amounts.

[2]The mortgages cover the land and any structures built thereon, as well as the crops and livestock from the farm. Item 59, Exh. 1, p. 2.

[3]CCC is the financial arm of the Agricultural Stabilization and Conservation Department ("ASCS"), which was the federal agency responsible for administering the farm storage loan program. As noted below, ASOS also administers the farm operation loans offered by the FmHA.

payments. See Item 51, Exh. 5; Item 63, Exh 18. Often defendants had to take out a new loan to pay off a portion of an older loan. For example, in 1981, Ms. Acomb took out a CCC loan for approximately $46,000.00, of which $5,000.00 was used to pay a portion of an earlier FmHA loan. In 1981, Ms. Acomb acquired a loan of approximately $47,000.00 from the CCC. On this occasion, Ms. Acomb used about $17,000.00 to payoff a portion of an earlier CCC loan, and the remaining $30,000.00 was applied to an earlier FmHA loan. See Items 56 and 59.

Even with these payments, Ms. Acomb's FmHA loans were categorized "delinquent" in the fall of 1981. See Item 63, Exh. 18. In January of 1982, defendants' financial troubles worsened when CCC discovered that Ms. Acomb was feeding the corn she had pledged as collateral for her 1981 CCC loan to her hogs. Item 43, Exh. 2, p. 4. CCC immediately sent Ms. Acomb a letter ordering her to discontinue this practice until she became current on her CCC loans. Id. Because the hogs had not yet been taken to market, Ms. Acomb lacked the money to do so; however, she still continued to feed the pledged corn to her hogs.

In the weeks that followed, CCC grew more concerned that Ms. Acomb's CCC loans were no longer fully secured, and thus sent her a second letter demanding that she pay the remaining balance on her CCC loan which amounted to $31,787.32. Id. With no savings of her own, Ms. Acomb attempted to use funds from her 1982 FmHA loan to pay off the CCC loan. Item 58, ¶ 7. However, William Humphrey ("Humphrey"), Supervisor of the Livingston County FmHA, refused to release any of Ms. Acomb's FmHA money to CCC. Eventually, Humphrey reversed his earlier decision and allowed a portion of

defendants' FmHA loan to be used to purchase the remaining corn from CCC.[4] In doing so, however, Humphrey required Ms. Acomb to sign a second loan agreement. That agreement prohibited Ms. Acomb from incurring expenses in excess of $1,000. without prior written approval of FmHA and required Ms. Acomb to deposit all hog-sale checks from Hatfield Packing Company into an FmHA-supervised bank account. Item 59, Exh. 2; see also Item 51, Exh. 5.

In March of 1985, FmHA denied defendants any further loan services or assistance. According to Humphrey's letter dated March 18,1985, defendants' 1985 loan application was denied primarily because they owed more than $900,000.00 and had annually borrowed more money than they repaid. Item 51, Exh. 16, Letter 16; see also Item 63, Exh 18: Defendants appealed FmHA's decision.

While the appeal was pending, Humphrey consulted Paul Dendis ("Dendis"), another FmHA employee, regarding the status of defendants' account. The two men agreed that the poor status of defendants' account permitted Humphrey to reject defendants' farm plan and apply all hog-sale proceeds to delinquent FmHA loan accounts. Item 51, Exh. 16, Letter 17. Thereafter, Ms. Acomb received a letter dated May 31, 1985, in which Humphrey informed her that "FmHA will no longer release hog, livestock or crop proceeds to [her]." Item 59, Exh. 4. Instead, [t]he proceeds from the sale of [the] loan security" would be applied to her FmHA loan accounts. Id. To avoid this, Ms. Acomb bypassed the Hatfield Packing Company (her designated market) and sold the hogs in alternative markets. Item 58, ¶ 14. Defendants admit that Ms. Acomb's actions violated

[4]Humphrey did not allow FmHA funds to be used to purchase the corn defendant had already fed to the hogs.

their FmHA loan agreement, but claim that it was necessary to keep the farm in operation. Id.

In October of 1988, when the government learned that Ms. Acomb had sold the hogs she pledged as collateral, she was charged with unauthorized sales and conversion of property pledged as collateral for farm loans, a criminal violation under 18 U.S.C. § 658. Item 59, Exh. 8. As a result, Ms. Acomb was served with a summons to answer a felony complaint, and she was arraigned before United States Magistrate Judge Kenneth R. Fisher and released on a $5,000.00 bond. Subsequently, United States District Judge David G. Larimer dismissed the felony complaint against Ms. Acomb, and the United States Attorney's Office declined to file a criminal indictment in the matter.

Neither defendant has made a payment on their FmHA loans since January 2,1985. Item 77, p. 5. Defendants have also failed to pay real property taxes; and as such, the FmHA has paid the taxes in order to protect its security interest. Id. As of March 19, 1999, defendants are jointly indebted to the United States in the amount of $997,716.37, with daily interest accruing at approximately S85.1 9. Ms. Acomb is indebted for an additional $772,481.40, with interest accruing at approximately $89.93 per day. Item 78.

II. Procedural History

In 1987, CCC filed a civil action against Ms. Acomb in United States v. Acomb, 84-CV-1 389. In its complaint, CCC sought repayment for the corn that defendant pledged as collateral for her 1981 loan but then later used as hog feed. As a defense, Ms. Acomb argued that Humphrey had unlawfully required that all new FmHA loan money be paid to current FmHA loans, not to the delinquent CCC loans as Ms. Acomb requested. See Item

59, Exh. 1. United States District Judge Telesca ultimately agreed with Ms. Acomb that Humphrey had created an unauthorized preference for FmHA loans. However, Judge Telesca did not find that Humphrey's actions interfered with Ms. Acomb's ability to repay her FmHA loans, and thus only the CCC loan debt was discharged. Id.

Based on Judge Telesca's ruling, Ms. Acomb filed a separate civil suit against FmHA, Humphrey, and a number of other federal employees seeking the discharge of her FmHA debt as well as punitive damages. The main issue in that case was whether Humphrey and other FmHA employees violated defendants' constitutional and statutory rights when Ms. Acomb was prevented from distributing her FmHA loan money and hog proceeds to CCC. Judge Larimer dismissed the complaint, finding that it lacked "any viable cause of action," and '~[t]he mere invocation of statutes cannot overcome" that "fatal flaw.' Acomb v. Farmer's Home Admin., 92-CV-6300L, Item 51, Exh. 11-B, p. 13.

On May 6,1996, plaintiff filed an action to foreclose four certain real property mortgages defendants used to secure the FmHA loans which are in default, as well as the enforcement of its security interest in defendants' farm equipment. Item 1.[5] On May 9, 1996, plaintiff filed a notice of pendency against the properties. Item 2. Defendants filed their answer on September 30, 1996 (Item 25), and then on October 24, 1996, filed another amended answer with affirmative defenses and counterclaims, as of right, pursuant to Rule 15(a) of the Federal Rule of Civil Procedure. Item 27. Plaintiff responded to the counterclaims on December 24, 1996. Item 30.

[5]In addition to defendant Joyce Acomb, plaintiffs named parties who have an interest in, or lien upon, the mortgaged premises. Plaintiff has since settled with all other defendants, and only Joyce Acomb remains a defendant.

Defendants thereafter moved to file an amended answer. Item 32. In an order dated November 25, 1997, the court denied that motion. Item 49.

On September 16, 1997, defendants filed a motion to serve a third-party complaint. Item 43. Plaintiff filed a motion for summary judgment on December 15, 1997, seeking foreclosure and sale of defendants' property as well as the dismissal of defendants' affirmative defenses, counterclaims, and third-party complaint. Item 51. In addition to filing response papers opposing plaintiffs dispositive motions (Items 56-59), defendants also filed two amended answers. See Items 54 and 55. Because defendants never sought leave to file these answers and the court has not granted leave, they are not properly before the court. Thus, the information therein will not be considered in reaching a decision on the pending motions. See Fed.R.Civ.P.15(a) (1999).

On August 5, 1998, defendants filed a motion to dismiss plaintiffs complaint for failure to prosecute. Item 70. On August 14, 1998, an order was issued stating that plaintiffs motion for summary judgment is considered submitted; and if the motion is granted, the other motions pending in the case will be rendered moot. Item 65. Since the issuance of that order, defendants filed another motion requesting permission to amend their answer. Item 67. As with the other motions pending, the court will reserve judgment on this most recent motion to amend until it has fully considered plaintiff's motion for summary judgment.

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate where a review of the record reveals that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56 (c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). When deciding a motion for summary judgment, courts "view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." American Casualty Co. v. Nordic Leasing, Inc., 42 F.3d 725, 728 (2d Cir. 1994).

The moving party bears the responsibility of identifying for the court the portions of the record which demonstrate the absence of any material facts. Federal Deposit Insurance Corp. v. Giammatti, 34 F.3d 51,54 (2d Cir. 1994) (citing Celotex v. Catrett, 477 U.S. 317, 323 (1986)). Once the moving party has provided sufficient evidence to support a motion for summary judgment, the opposing party must "set forth specific facts showing that there is a genuine issue for trial." Endico Potatoes, Inc., v. CIT Group Factoring, 67 F.3d 1063, 1066 (2d Cir. 1995) (quoting Fed. R. Civ. P. 56(e)).

If one party is proceeding pro se, their supporting papers are read liberally, interpreting them to raise the strongest arguments they suggest. Burgos v. Hopkins. 14 F.3d 787, 790 (2d Cir. 1994). However, a pro se party's "bald assertion, completely unsupported by evidence" is insufficient to overcome a motion for summary judgment. Carey v. Crescenzi. 923 F.2d 18, 21 (2d Cir. 1991). Here, plaintiff has moved for summary judgment on its claim for foreclosure and sale of defendants' farm and farming equipment. Thus, the issue before this court is whether,

by viewing the facts in the light most favorable to defendants, a factual dispute exists on the record which prevents the court from rendering a judgment in favor of plaintiff as a matter of law.

II. Foreclosure and Sale of the Farming Equipment

Plaintiff sufficiently establishes that it has a perfected security interest in defendants' farm equipment. There is no dispute that FmHA loaned a total of $100,000.00 to Joyce L. Acomb on May 14,1984. Nor is there any dispute that as security for the loan, Ms. Acomb executed and delivered five security agreements to FmHA covering, among other things, defendants' then-owned or thereafter-acquired farm equipment, thus encumbering defendants' interests in the personal property at issue..

Defendants do not raise any defenses as to the validity of the security agreements or their perfection and continuation. Moreover, defendants do not dispute that they are in default with respect to the terms of the loan documents by reason of defendants' failure to make the agreed-upon monthly payments. Item 27, ¶11. Accordingly, no issue of fact exists as to the foreclosure and sale of defendants' personal property in satisfaction of plaintiffs security interest; and therefore, summary judgment is granted.

III. Foreclosure and Sale of the Real Property

It is also undisputed that defendants have failed to timely repay their FmHA loans. In its motion for summary judgment as well as in its initial complaint, plaintiff provides uncontradicted evidence of defendants' indebtedness, their failure to satisfy the debt, and

the right of the United States to seize and sell defendants' property in order to recoup the money borrowed through FmHA. See Items 1, 51, and 78.

Moreover, defendants do not dispute that between 1978 and 1984, either jointly or as individuals, they executed and delivered four mortgages to FmHA as security for loans, thus encumbering their interests in the real property at issue for over $700,000.00. Defendants also do not dispute or call into question the validity of the mortgages, or that the last payment received on the debt was made in January 1985. As such, this foreclosure action is ripe for decision; and in the absence of an affirmative defense or legitimate counterclaim, plaintiff is entitled to summary judgment. See United States v. Warren Brown & Sons Farms, 868 F. Supp. 1129, 1132 (E.D. Ark.1994); Federal Land Bank of St. Louis v. Hopmann. 658 F. Supp. 92, 94-95(E.D. Ark.1987).

A. Affirmative Defenses

Given the sufficiency of evidence submitted by plaintiff, summary judgment is appropriate unless defendants can establish that there is an applicable defense which legitimately absolves them of their obligation to repay their FmHA debt. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (establishing that if the party moving for summary judgment has met its burden, then in order to defeat the motion, the non-moving party must identify evidence sufficiently probative to warrant a reasonable jury verdict in its favor). Reading defendants' response papers in the liberal light afforded to pro se litigants, defendants assert four affirmative defenses.

1. Statute of Limitations

Defendants first argue that the present action is barred by the statute of limitations. It is settled law, however, that "the United States is not bound by a statute of limitations unless Congress has explicitly expressed one." Westnau Land Corp. v. U.S. Small Business Admin., I F.3d 112, 115 (2d Cir.1993) (citations omitted). In Westnau, the court specifically held that 28 U.S.C. § 2415(c) does not apply to mortgage foreclosure actions by the United States. Further, the court did not even address the question of whether to look to New York law "to fashion an interstitial statute of limitations for foreclosure actions by the government." Id. at 117. "[T]here is no vacuum to fill because the ancient rule that the United States is not subject to a limitations period clearly addresses the issue presented." Id. Defendants' statute of limitations defense fails.

2. Impossibility of Performance

Defendants next argue that "the acts and actions of government officials" made it impossible for them to repay their FmHA debt. Consequently, defendants contend that they do not owe any money to plaintiff. Item 58, ¶ 2. According to defendants, Humphrey conspired with other federal employees to defraud, defame, and ultimately force defendants from the hog-farming business. See Item 56, pp. .5-7, 9-11; Item 69, p. 7. More specifically, defendants argue that by prohibiting Ms. Acomb from using FmHA loan money to pay off her CCC operating loans, Humphrey caused Ms. Acomb's CCC loans to go into default, forcing the CCC to file a lawsuit against her. While the lawsuit was pending, defendants argue that Ms. Acomb was unfairly denied FmHA loans and subjected to harassment by Assistant United States Attorney Christopher Taffe. Item 58, ¶ 15.

Under such circumstances, defendants contend that they were unable to complete the expansion of the hog farm and prevented from earning the money needed to remain current on their FmHA loans. Id.

This affirmative defense is barred by res judicata. Under the doctrine of res judicata, also known as claim preclusion, "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n. 5 (1979). "Res judicata prevents the subsequent litigation of any defense or ground for recovery that was available to the parties in the original action, whether or not it was actually litigated or determined." Tucker v. Arthur Andersen & Co., 646 F.2d 721, 727 (2d Cir.1981). Res judicata is not concerned with whether a prior judgment was right or wrong or whether subsequent changes in the law or considerations of fairness should merit a different result in the subsequent litigation. Nemaizer v. Baker, 793 F.2d 58, 64-66 (2d Cir. 1986). The doctrine is concerned with bringing an end to litigation after the parties have had a fair opportunity to litigate their claims.

Here, defendants attempt to relitigate the same issues they raised in Acomb v. Farmers Home Admin., 92-CV-6300L. In that case, defendants alleged that Humphrey and other federal employees unlawfully interfered with the distribution of defendants' CCC and FmHA loan money. Judge Larimer dismissed defendants' complaint in that action, finding that it failed to state a legal cause of action. Because the present case involves the same two parties (the Acombs and FmHA) and defendants are attempting to reassert the same cause of action (impossibility of performance), the doctrine of res judicata applies. Accordingly, defendants' defense of impossibility of performance is dismissed.

Even if the defense were properly before this court, it would be dismissed for lack of merit. As evidenced by Humphrey's letters to Ms. Acomb dated October 26,1981, and November 15, 1982, defendants were delinquent on their FmHA loans well before Ms. Acomb's CCC loans ever became an issue. See Item 63, Exh. 17. And as evidenced by Humphrey's letter of November 15, 1984, this delinquency continued to grow despite attempts by FmHA employees to reschedule and reamortize the loans. See Item 1, ¶¶ 19-20; Item 59, Exh. 2a.

Furthermore, it is clear from the record that the reason defendants became delinquent on their FmHA loans was not due to any wrongdoing on the part of Humphrey or other FmHA employees, but because defendants' hog farm was not a profitable operation. It was an operation which required large overhead costs and produced little short-term profit.

Although defendants submit a number of documents indicating that the farm had the potential to be profitable if managed correctly (Item 59, Exh. 14), their inability to remain current on their FmHA loans establishes that the farm operation never actually made a profit. By 1 985, defendants were delinquent in making approximately $287,439.17 worth of payments on their FmHA debt, which totaled approximately $90O,000.00. Item 51, Exh. 16, March 18, 1985, "Letter to Joyce Acomb from William Humphrey." As a result, defendants' 1985 FmHA application for loan and loan-servicing was denied.

However, the denial of FmHA loans did not deter defendants from continuing with their plans to expand the hog farm. Instead of relying on federal loans, defendants used commercial credit to pay farm operation expenses. Item 59, ¶ 10. When the credit card

limits Were reached, defendants resorted to selling approximately $700,000.00 worth of hogs which had been pledged as collateral for their FmHA loans. Item 59, ¶ 14.

To date, FmHA has not received a penny of the illegal proceeds. Item 78. Instead, defendants used the money to pay their other creditors. The court also notes that plaintiff has been forced to pay several years worth of real estate taxes in order to protect the security interest on the farm. Item 78. Property taxes were another expense that defendants chose not to pay so that they would have more cash on hand to either pay off their other creditors or invest additional money into the sinking hog farm. In sum, it is obvious that defendants preferred to use the money they were able earn to pay creditors other than FmHA. As such, their argument that FmHA made it impossible for them to repay their FmHA debt is without merit

3.Failure to Comply with Federal Regulations

As a third affirmative defense, defendants argue that FmHA, specifically Humphrey, Dendis, and Charles Valsing (Valsing'), failed to comply with federal regulations. In particular, defendants allege that FmHA did not grant loan-servicing options such as debtors' forbearance, modifications, and restructurings to which Ms. Acomb was entitled, thus denying her equal protection under the law.

Defendants' assertion is barred by res judicata. As noted previously, defendants already brought suit against FmHA, Humphrey, Dendis, and Valsing in Acomb v. Farmer's Home Administration, No. 92-CV-6300L. One of the claims in that action was that Humphrey and the other defendants conspired to commit fraud and other intentional wrongdoings in the servicing of defendants' loans. Judge Larimer found that the

allegations of conspiracy and fraud failed to state a cause of action for which relief could be granted. The case was dismissed, and the Acombs were sanctioned for $2,000.00. Given that the same parties and the same issues are involved here, the defense is barred by res judicata.

Even if the defense were properly before this court, FmHA has submitted documentation establishing that it did not violate federal regulations regarding loan servicing, restructuring, and foreclosure. The exhibits in Item 51 and Item 63 detail the servicing options and notification requirements that FmHA is obliged to follow. The exhibits also provide copies of letters sent to Mr. and Mrs. Acomb regarding their loans and the available FmHA-servicing options. While it is true that FmHA denied defendant the deferral she requested in November of 1984, the March 18, 1985, letter verifies that FmHA was justified to do so. At the time Ms. Acomb requested the deferral, defendants were in debt for more than $9O0,OOO.OO and had been consistently borrowing more money than they were capable of repaying. Item 51, Exh. 16.

Defendants' claim that the denial of a deferral violated 7 C.F.R. § 1951.41 also lacks merit. The set-aside provision published at 7 C.F.R. § 1951.41, which defendants cite as being violated, did not go into effect until November 1,1985. See 50 F.R. 45740. Thus, the provision does not apply to Ms. Acomb's 1984 request for a deferral. As such, defendants fail to prove that a triable issue of fact exists as to whether plaintiff violated federal regulations in the servicing of their FmHA loans.

4. "Coleman Injunction" and the Agricultural Credit Act of 1987

Defendants further contend that summary judgment is not appropriate because

there is a material issue of fact as to whether plaintiff violated the "Coleman Injunction" issued in Coleman v. Block, 580 F. Supp. 194 (D.N.D. 1983). That injunction prohibited, inter alia FmHA from "liquidating the living and operating allowance from sale proceeds of crops and livestock offered as collateral for FmHA loans, unless the FmHA provided 30 days' written notice of the action with reasons for the action, a right to an appeal, and an opportunity to establish eligibility for loan deferral under 7 U.S.C. § 1981a." Coleman v. Lying, 864 F.2d 604, 605(8th Cir. 1988) citing Coleman v. Block, 580 F. Supp. 194,210-11 (D.N.D. 1984).

Here, defendants claim that Humphrey violated the injunction when he refused to release any portion of the proceeds from the Hatfield Packing Company, and in doing so caused defendants to default on their FmHA loans. See Item 59, Exh. 4. This claim is barred by res judicata, as defendants raised the same issue in Acomb v. Farmers Home Admin. 92-CV-6300L, Item 51, Exh. 11-B p. 19-20. Judge Larimer dismissed the claim finding that [a]n alleged violation of that injunction is not actionable ... since the injunction was rendered moot by the Agricultural Credit Act ("ACA") of 1987," and no private action exists under the ACA. Therefore, defendants[1] claim that FmHA violated the Coleman Injunction is dismissed.

B. Counterclaims and Third Party Complaint

Defendants further argue that in addition to the affirmative defenses, summary judgment is barred by the counterclaims listed in their amended answer (Item 27) and the issues raised in their third-party complaint. The counterclaims contain allegations against FmHA, Humphrey, Dendis, Taffe, Valsing, Judge Telesca, and one of Judge Telesca's

employees. Defendants allege federal-question jurisdiction for each counterclaim based upon the violation of the Acombs' rights under 42 U.S.C. §§ 1983, 1981, 1982, 1 985(2)(3), the Bivens doctrine, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. The third-party complaint raises the same issues with some greater detail as the counterclaims, alleges new violations under 42 U.S.C. § 1988 and the First and Seventh Amendments, and adds the United States of America, Pierre Labourdette ("Labourdette'), Judge Larimer, Nancy Neu ("Neu"), and John Doe, Mary Roe, and XYZ Corporation as defendants.

1.Claims against FmHA, Humphrey, Dendis, Valsing Labourdette, Neu, and other unnamed federal employees

Defendants allege in both their counterclaim and third-party complaint that "[b]ut for the fraud, conspiracy by an array of government officials (later named as FmHA, Humphrey, Dendis, Valsing, Pierre Labourdette, Nancy New and unnamed federal employees) the Acomb farm enterprise would at this point in time be very successful." Item 43, Exh. 2, p. 2; see also Item 27. These allegations are identical to those asserted by the Acombs in previous suits against FmHA, Humphrey, and other government employees, both of which were dismissed on the merits. See Acomb v. Farmers Home Administration, et al., 92-CV-6300L; and Florence Camey Estate v. Farmers Home Administration, et al., 93-CV-6431L.

As discussed in greater detail above, the doctrine of res judicata precludes the parties or their privies from relitigating issues that were or could have been raised in an action where a final judgment on the merits was issued. Leather v. Eyck, 180 F.3d 420,

423 (2d Cir. 1999). Res judicata was judicially created in order to relieve parties "of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Allen v. McCurry, 449 U. S.. 90, 94 (1980).

Here, defendants attempt to relitigate claims already decided by Judge Larimer in Acomb v. Farmers Home Administration, 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, 93-CV-6431. As such, the claims are dismissed.[6]

2. Claims against Judge Larimer and Judge Telesca

Defendants' counterclaim and/or third-party complaint alleges wrongful conduct on the part of Judge Telesca and Judge Larimer. It is settled law, however, that judges are protected by absolute immunity for judicial acts unless they act in clear absence of jurisdiction. Mireless v. Waco, 502 U.S. 9 (1991).

Here, defendants contend that both Judge Telesca and Judge Larimer denied farmers the opportunity to present evidence in the litigation of various cases in the Western District of New York. See Items 27 and 43. Thus, it is clear that defendants' claims against both Judge Telesca and Judge Larimer stem from their judicial roles; and as such, defendants must raise evidence which creates a question as to whether either judge acted

[6]Although Nancy Neu and Pierre Labourdette were not named as parties in Acomb v. Farmers Home Administration, et al., 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, et al. 93-CV-6431L, defendants are nonetheless barred from bringing an action against them because both New and Labourdette were in privity with defendant FmHA when the two suits were filed. See Leather v. Eyck, 1999 WL 378336 (2d Cir. 1999).

in "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. at 357 (citation omitted). Defendants fail to do so.

While it is true that Judge Larimer did not allow defendants to present evidence in Acomb v. Farmers Home Administration, et al., 92-CV-6300L; and Florence Carney Estate v. Farmers Home Administration, et al., 93-CV-6431 L, two actions over which he presided, his decision to deny their request was completely justified. A review of the decisions in the two cases reveal that both cases were dismissed in the initial stages of litigation because the court determined that it was without jurisdiction, the defendants lacked standing, and the complaint failed to state a cause of action. Under such circumstances, there was no remedy under the law, and defendants were therefore not entitled to present evidence. Defendants provide no evidence to prove the opposite; and as such, Judge Larimer's actions are protected by judicial immunity, and the counterclaim and third-party complaint against him are dismissed

Defendants' allegation that Judge Telesca also denied them the right to present evidence in United States v. Acomb, 84-CV-1369, is conclusory and unsubstantiated. Moreover, the allegation is contradicted by defendants' own papers, which clearly establish that Judge Telesca fully considered all of the documents that the Acombs submitted in their case. In fact, after considering the Acombs' documents, Judge Telesca ruled in favor of Ms. Acomb, discharging her entire CCC debt.

Even if sufficient evidence exists which establishes that defendants were denied the right to present evidence, Judge Telesca is protected by judicial immunity. As explained above, a judge is protected from lawsuits regarding the decisions he made as a judge unless he was acting without jurisdiction. None of the evidence submitted in this case

raises even a doubt as to whether Judge Telesca lacked jurisdiction to preside over United States v. Acomb. As such, defendants' claims on that ground fails.

In addition to preventing them from introducing evidence, defendants also claim that Judge Telesca is liable for the allegedly dishonest actions of his court reporter, John DeMartino. Apparently defendants sent DeMartino two checks for $100.00 and $450.00 for a transcript of the proceedings in United States V. Acornb, 84-CV-1389. Defendants claim that DeMartino accepted the checks, but to date he has not provided them with a copy of the transcript. See Item 56, ¶ 18; Item 59, Exh. 17-19.

Judge Telesca cannot be held responsible for the private business transactions of his court reporter. The claim involving DeMartino arises from a private business transaction between DeMartino and defendants. Thus, this claim involves state, not federal, law. Moreover, the claims are wholly unrelated and irrelevant to this foreclosure action. Accordingly, the counterclaims and third-party complaint against Judge Telesca are dismissed.

3. Claims Against Christopher Taffe

The fourth and fifth counterclaims and the third-party complaint (Item 42, il¶I 16 and 17) concern the criminal charges which were brought against Ms. Acomb by the United States Attorney in October of 1988 but subsequently dropped in 1991. Defendants allege that Christopher Taffe, the Assistant United States Attorney assigned to handle the case, is guilty of making false accusations, discrimination, conspiracy, abuse of prosecution, perjury, malice, fraud, and denial of due process, all of which allegedly caused defendants extreme mental and emotional distress.

The claims against Taffe must be dismissed because they are wholly unrelated to the present foreclosure action and thus do not qualify as a counterclaim under Rule 13 of the Federal Rules of Civil Procedure. Furthermore, there is no evidence presented involving Taffe which would cause a reasonable jury to absolve defendants of their responsibility to repay their FmHA loans. The claims against Taffe all relate to the1988 criminal case against Joyce Acomb and have nothing to do with this foreclosure action. The decision to prosecute Ms. Acomb was not even that of FmHA. It is solely the province of the U.S. Attorney to prosecute for offenses against the United States. The claim against Taffe bears no relationship to the plaintiffs complaint and is inappropriate to assert as a counterclaim.

The claims against Taffe are also time-barred. A counterclaim that seeks affirmative relief is an independent cause of action and must comply with the applicable statute of limitations. Hurst v. U.S. Dept. of Educ.. 901 F.2d 836 (10th Cir. 1980). The New York Civil Practice Law and Rules Section 214(5) provides for a three-year statute of limitations for an action to recover damages for personal injury. '[S]ection 214(5) of the New York Civil Practice Law and Rules is the applicable statute of limitations for ~ actions brought in federal court in New York State." Chin v. Bowen, 833 F.2d 21, 24 (2d Cir. 1987). The most recent date indicated by defendants in which the alleged violations occurred is January 29,1991. As such, more than three years has passed, and the claim is time-barred. Thus, this claim must be dismissed upon the basis that it fails to state a claim upon which relief can be granted.

Even if the claim against Taffe was timely, it would not bar plaintiffs motion for summary judgment. As indicated above, plaintiff provides sufficient evidence to establish

that there are no genuine issues of material fact as to the validity of the mortgages and that defendants are now in default on those mortgages. Therefore, to defeat summary judgment, defendants must identify concrete evidence sufficiently probative to warrant a reasonable jury returning a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U. S.. 242, 249 (1986).

Accordingly, the claims against Taffe are dismissed.

4. Remaining Counterclaims and Third Party Defendants

The court has considered defendants' remaining claims and arguments and find them to be without merit. Neither the counterclaims nor the remaining claims included in the third-party complaint comply with Federal Rule of Civil Procedure 8, which requires that a complaint include a "short and plain statement" of the claim that is "simple, concise, and direct." Here, defendants' ramblings fail to link specific actions of the plaintiff or third-party defendants to any viable cause of action. Moreover, even if this court were to accept every fact alleged in the counterclaims and third-party complaint as true, the allegations are at best speculative. It is well established that a well-founded motion for summary judgment cannot be defeated solely on the basis of conjecture or surmise. Bryant v. Maffucci, 923 F.2d 979, 985 (2d Cir. 1991). cert. denied, 502 U.S. 849 (1991). Therefore, defendants fail to establish that a genuine issue of material fact exists for trial; and thus, summary judgment is appropriate.

CONCLUSION

Accordingly, plaintiffs motion for summary judgment (Item 51) is granted, and defendants' counterclaims and third-party complaint are dismissed. Items 27 and 43. All

other motions pending in this matter are judgment shall be entered for the plaintiff.

So ordered.

JOHN T. CURTIN

United States District Judge

Dated: September 9, 1999

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs

INDEX NO. 96-CV-6229

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C, D, E, F.

AFFIRMATIVE DEFENSE AND COUNTER CLAIM

I. PRELIMINARY STATEMENT

In 1978, the Acomb family farm received a loan from FmHA to improve and expand their building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach their immediate goal of selling three thousand finished hogs per year. The first year, 1978, there were 689 head sold for $80,231. In 1979, the numbers increased to 905 head for $90,112. In 1980, due to the shortage of money and increased number of animals sold, the Acomb's oldest daughter,

Lori, came home to work on the farm. She had graduated from the Chamberlain School of Retailing, and was just promoted to Assistant Manager by the Ames Department Store at Arcade, INY. While receiving over $300 per week at that employment, she was paid by her mother, Joyce, $50 per week plus board for farm work. Their son Brent, who had started a career in the US Air Force, I think in 1978, came home in 1980 on an early discharge and worked for $50 per week and board. Their youngest daughter Renee, sometime later quit college and came home to work for the same pay. In 1980 the farm produced 1569 market hogs for $148,139. In 1981 the production was 1968 animals for $187,842. The number increased again in 1982 to 2887 animals sold for $284,711.

Joyce L. Acomb, the owner and working manager of their farm, was the winner of the 1982 New York State corn growing championship that was conducted by the National Corn Growers Association. This was in the non-irrigated, Class A section of the contest. The yield was 172.22 bushels per acre, or 4.82 tons per acre.

In 1980 and 1981, in addition to the FmHA loans, Joyce L. Acomb received "farm storage loans" from the Commodity Credit Corporation. In November of 1980, Joyce Acomb received $46,682.30 from CCC, of which *$5,528* was applied to the repayment of a prior CCC loan taken by the defendants former husband, Charles B. Acomb. The remainder $41,143. was issued jointly to Ms. Acomb and the FmHA. The FmHA immediately applied the CCC loan proceeds to an outstanding FmHA loan. Collateral for the 1980 CCC loan consisted of stored corn from the 1980 crop. Mrs. Acomb requested and received a repayment schedule for the 1980 CCC loan and made payments accordingly. Joyce L. Acomb found the manager of CCC, Joseph Hauryski, easy to deal with

On December 1, 1981, Mrs. Acomb entered into another loan agreement with CCC for a 1981 farm storage loan, pledging her 1981 corn crop as collateral. The new CCC loan was $49,911. disbursed as follows: 1. $17,471. was applied to the outstanding balance on the 1980 crop loan. 2. A check, payable jointly to Mrs. Acomb and the FmHA was applied to the FmHA loan. Mrs. Acomb immediately upon receiving the check in the amount of $32,439., left Mr. Hauryski's office and proceeded directly to t he FmHA office, which was located on the second floor of the same building. The check was delivered personally to Mr. William Humphrey, who was then the supervisor. Mr. Humphrey was not present during the year 1980 through 1981. Mr. Humphrey immediately applied the entire amount to the outstanding balance on Mrs. Acomb's FmHA loan. Joyce L. Acomb did not receive one cent" of the CCC loan for use at her own discretion.

As before, Mrs. Acomb requested that Mr. Hauryski set up a payment schedule for her to repay .the loan of 1981. Mr. Hauryski provided her with a repayment schedule after the December 1, 1981 disbursement of the loan and setup each payment to coincide with her anticipated use of the corn, so that the balance of corn remaining could secure the loan balance at that time. Mrs. Acomb's understanding of the repayment schedule was that it was based upon the sale of her hogs, and payments would be larger in those months for which she predicted she would sell a greater number of hogs. Mr. Hauryski however thought that he believed the repayment schedule to be based on a redemption formula, under which Mrs. Acomb could redeem bushels of corn only as she paid for them. This apparent misunderstanding as to the terms of the repayment schedule precipitated the dispute between the FmHA and the ASCS. In January of 1982, Mrs. Acomb began feeding her hogs the corn that served as collateral for the 1981 CCC loan. Suspecting that to be the case, on January 22, 1982, a county executive director-trainee, made a spot check of the corn subject to the 1981 loan and found that approximately 3,000 bushels had been fed from the bin, On

March 15, Mrs. Acomb made her first payment on the 1981 CCC loan totaling $2,062. On the same day, Mr. Hauryski wrote her a letter requesting that she discontinue feeding from the bin until she could bring her account current with CCC. On March 17, 1982, Mr. Hauryski measured the corn and found that approximately 7,354 bushels remained in the bin. Concerned that Mrs. Acomb's loan was no longer fully secured, he wrote Joyce Acomb and asked her to pay the full amount, or $31,787. before she fed anymore corn out of the bin.

At the time Mr. Hauryski notified her that she would have to discontinue feeding the corn, Mrs. Acomb was attempting to negotiate a new annual operating loan with FmHA. IN her application, as she had done in previous years, she disclosed the outstanding loan from CCC. Moreover, Mr. Humphrey knew that she had the CCC loan because he had applied the proceeds of that loan to FmHA accounts the very same day it was disbursed. Mrs. Acomb asked Mr. Humphrey if she could include payment of the CCC loan in her budget, and he refused, telling her that she could not use FmHA funds to pay that debt. She visited Mr. Hauryski to discuss the difficulty she was having repaying the loan. After an extended discussion, Mr. Hauxyski informed her that if she did not repay the CCC loan, he would have no choice but to sue her. Immediately after that discussion, she went upstairs to Mr. Humphrey's office to tell him what Mr. Hauryski had just said, and his response was in substance, "So what! Let him sue". Mrs. Acomb then asked Mr. Humphrey if she could buy from CCC the corn that remained in her bin because she could not buy it at a better price and she needed it immediately to feed her hogs.

Mr. Humphrey agreed to this, but reiterated that none of the operating loan funds could be used to pay for the CCC corn already fed, but only for the existing corn in her bin. The day before authorizing payment for the remaining corn, he insisted that Mrs. Acomb sign a loan agreement in which she agreed not to incur capital expenses in excess of $1,000. without the written approval of FmHA, and to continue to deposit all hog checks in FmHA supervised bank account. This Loan Agreement was typed on plain typing paper

and imposed additional restrictions not provided for in the basic FmHA Agreement in force, nor in the C.F.R.

Not only did Mr. Humphrey control the money Mrs. Acomb received under the FmHA loan program, he now also controlled all of her income from hog sales, which he required her to deposit in a supervised bank account, and in addition would only permit a maximum expenditure of $1,000. for capital expenses. In order to spend any of the money in her operating account, Mrs. Acomb required permission from Mr. Humphrey on an item-by-item basis. He had demanded complete authority to release the finds for any proposed expenditure. Mr. Humphrey stated very clearly, that if Mrs. Acomb used any of the money to pay CCC for the corn, he would "liquidate her immediately". Mr. Humphrey also knew that the Acomb farm assets exceeded the debt by $101,769. In many instances, records will show that FmHA will sponsor new accounts with hundreds of thousands of dollars of debt above their assets. It is also a fact that in Mr. Humphrey's notes, recording a telephone conversation on June 18, 1982 with Paul Dendis, an FmHA official, from whom Mr. Humphrey frequently sought advice, he states that Mr. Dendis "suggested that FmHA pay CCC a prorated share of any payments from sale of hogs in order that CCC get paid also". Despite CCC's efforts to cooperate, and Mr. Humphrey's own agency's recommendation, Mr. Humphrey refused to share any of the proceeds from the sale of hogs with the CCC.

Mr. Humphrey also insisted that Joyce Acomb keep an itemized record of every check issued and for what purpose. She had to present this record to him personally once a month. Mr. Humphrey would then co-sign her hog check from the Hatfield Packing Co. in Pennsylvania. This was the best market for "high grade hogs" in the north east, and a considerable advantage monetarily.

On 10/6/83, Mr. Humphrey made the following notation in his records:

10-6-83 farm visit the entire Acomb family was on hand. Inspected and inventoried hogs this date. Joyce has good set of records on this inventory.

feeders all ages from just born piglets to 220 # on hand ---------- 2512
Sows and Gilts on hand----------288

Ave. pigs weaned per sow from 1-1-83 to 9-30-83 = 8.4

The price is poor right now @$.43 base. Joyce is working at forward contracting soybean, thinks has enough corn on hand until PIG corn becomes available. Discussed financial situation with them including Bruce who sat in kitchen. I was impressed by the thrifty trim well grown hogs being produced here. Released a hog check to purchase corn.

The threat of liquidation and having to face a law suit in regard to CCC obligation created "mental and emotional distress", was an abusive governmental action, was discriminatory and was contractual interference. Mr. Humphrey also ignored the fact that the two agencies have a "memorandum of understanding" at the national level.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In 1983, the farm produced 3,637 animals that grossed $388,275. In 1984, the production was 3,266 and grossed $396,134. At this time, the Acomb family was looking to expand

the operation by using a dairy barn owned by Charles B. Acomb's mother, Florence J. Carney. There was room for 36 to 40 additional farrowing stalls that would allow an increase of approximately 2,000 market hogs, and or salable feeder pigs. We would sell feeder pigs from the home farm also so as to allow more room for additional numbers.

Late in 1984, the Agricultural Stabilization and Conservation Department (ASCS), started a civil suit against Joyce L. Acomb to collect monies that Mr. Humphrey refused to allow her to pay. This meant additional mental and emotional distress as the

family thought that any government body could liquidate them as Mr. Humphrey had threatened. Lawyers had to be hired etc.

THIRD AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In the early months of 1985, Joyce L Acomb was turned down in regard to an operating loan by Mr. Humphrey. On information and belief; Joyce started an appeal process following his decision. On information and belief, the appeal process took several months before it finally arrived on the desk of the administrator in charge at Syracuse, NY. On information and belief, there are to be no interruptions concerning the operation of the Joyce L. Acomb farm until the appeal process is complete. The rules are identified in the Code of Federal Regulations.

On or about June 2, 1995, Joyce L. Acomb received a letter dated May 31, 1985, from William E. Humphrey, Supervisor of the Livingston County FmHA.--it is identified as follows:

Dear Mrs. Acomb:

This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.

The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts.

Sincerely,

WILLIAM E. HUMPHREY
County Supervisor

This letter was devastating in that we knew Mr. Humphrey had on many occasions abused his power, with-in the knowledge of his superiors and on information and belief was never disciplined by any superior at any time. His superiors did at one time move him down state for a period of time after hearing farmer complaints. On information and belief, alter he was moved, Mr. Humphrey filed a lawsuit against the government.

Mr. Humphrey told Joyce L. Acomb on May 14, 1984, that she had to sign an agreement, Consent To Payment of Proceeds From Sale of Products. That meant that the hog checks were to be made out jointly to FmHA and Joyce L. Acomb by Hatfield Packing Co. In other words, Mr. Humphrey was forcing Joyce L. Acomb to allow him to keep all of the proceeds. This meant that 2327 hogs would be neglected. No money for labor, electricity, food for family etc. We will reiterate once more that Mr. Humphrey was in violation of the Code of Federal Regulations. Failure to give proper notice which was a violation of due process, and last but not least, in violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota.

The specific directives were as follows:

1. Page 33, 2(b). That the defendants,(FmHA), their agents, subordinates and employees are enjoined from proceeding to liquidate, or to terminate the living and operating allowances previously determined in the administration of any existing loan.

2. Page 34 C. That the defendants, their agents, subordinates, and employees are enjoined from;
-accelerating the indebtedness of the plaintiff
-foreclosing on the real property or chattels of the plaintiffs
-demanding voluntary conveyance by the plaintiff
-repossessing chattels of the plaintiff or in any way proceeding against or depriving the plaintiffs of property in which the defendants have a security interest.

This was in effect until 1987, and every FmHA official was privy to this information. At that time, we were under the impression that Mr. Humphrey was

authoring this devastating letter on his own, but we were wrong. Some years later, I believe in 1994, we became aware of a notation by Mr. Humphrey in his handwriting and is as follows:

> 5-30-85 p/c C/F/P Paul Dendis
>
> Discussed with him releasing hog checks as I have been doing, pending outcome of appeal, since I was under the impression that this was consistent with Coleman vs Block C/F/P advises that if I did not sign the the (Farm and Home Plan), then I did not agree to release and should send Mrs. Acomb a letter telling her there will be no more releases. This advice concurs with OGC advice to C/F/P.
>
> W.E.H.
>
> (OGC is Office of General Counsel, lawyer Charles Volsing's advice to C/F/P Chief of Farm Programs, Paul Dendis.)

Joyce L. Acomb had to make a decision either to follow the directive of Supervisor William E. Humphrey and be driven out of business, or follow the directives of the Code of Federal Regulations, and or follow the directives of Federal Judge Van Sickle through a Court Order. She chose the later. She had no alternative but to seek out other markets that resulted in lower prices. From 6/5/85 to 9/13/86 the farm lost $17,371.27 because the Hatfield Packing Co. was not an available market.

In 1985 due to poor boar power and monies not available, the farm sold 2231 hogs for $212,996. In 1986 there were 2517 hogs sold for $284,057., and in 1987 there were 3406 sold for $376,929.

The devastating letter sent by William E. Humphrey, Livingston County Supervisor of the Farmers Home Administration was irrefutable proof that he, OGC lawyer Charles Volsing and CFP Paul Dendis, the FmHA Office in Syracuse and the Washington Office were all in contempt of a Federal Court Order as well as in contempt

of the Rules of the C.F.R. This act expanded mental and emotional distress to all family members, and was another abusive governmental action. It was an act of violation of due process as well as an obvious act of malice and denial of equal protection of the laws.

It is a fact that every item found in the Livingston County FmHA Office file is copied and sent to a file in the State Office at Syracuse, NY, and another is sent to the Washington Office. Each office has the same records and knowledge in regard to any and all activities.

FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Sometime in October 1988, Joyce L. Acomb was served a summons in a criminal case. She had to appear in Rochester, NY in front of US Magistrate, Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

They did not ask Joyce to plead, which would have been not guilty. She was fingerprinted, photographed and put on $5,000. bond. The following day, on October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating":

DANSVLLLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL

A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.

Joyce Acomb of 8317 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.

Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs

between June 1985 and October 1987.

Joyce L. Acomb was accused of selling $650,000 between June 1985 and October 1987. Her records show the figure was closer to $700,000.

According to NY State Labor figures, Joyce could have paid herself over $25,000 a year, but she always waived this opportunity. These accusations were all *false,* and the mental and emotional distress continued. There was discrimination, conspiracy and other abusive governmental actions.

FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Joyce received a letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury.

On June 8, 1990, Charles B. Acomb took a complete set of records to Joyce's lawyer in Buffalo. Charles then went to Rochester, NY and delivered a duplicate copy to US Attorney Office for US Attorney Charles Pilato. On August 31, 1990, Joyce received a letter from Assistant US Attorney, Christopher Taffe as follows:

Dear Ms. Acomb:
Enclosed please find the letter dated August 24, 1990 regarding the above-captioned case. This letter indicates that you are no longer represented by Mr. LaTona. Please advise me no later than September 7, 1990 who is representing you. ffl do not hear from you by that date, this case will be presented a federal grand jury and you will be indicted.

Very truly yours,
DENNIS C. VACCO
United States Attorney

By: CHRISTOPHER V. TAFFE
Assistant United States Atty.

On information and belief, sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, NY. There was to be a pre-trial conference on September 17, 1990. Charles B. and Joyce L. Acomb arrived with Joyce's lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's Courtroom and waited. Soon Assistant US Attorney Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyer, William Muoio came Out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Aconib very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest.

The trial began on 09/18/90 and a decision was recorded on September *25,* 1990, stated as follows:

> IT IS ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint is dismissed.

Joyce received a letter dated October 4, 1990 from her lawyer and he stated:

> Dear Joyce:
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Joyce Acomb was informed by her attorney William Muoio that the government was appealing her civil trial decision. This means more expense. Joyce had paid out $15,500 for two cases and still owes $7,101.74 plus interest. After many letter conferences and motions, US Attorney Leslie K. Lagomarcina submitted a Voluntary Dismissal dated January 29, 1991. This was filed in the United States Court of Appeals, Second Circuit on January 29, 1991.

On or about March 4, 1991, Charles B. and Joyce L. Acomb appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan: Dear Mr. Acomb: I sent your inquiry to the appropriate Executive agency and they have produced the enclosed response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator. ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security. Because this case is before the Court, we cannot comment on it at this time. We hope you find this information helpful in

responding to your constituent. Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home Administration, Washington, DC.

The information given to a United States Senator was false and was perjury. All of the decisions by the governmental employees were causing extreme emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb's face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca's Court on February 20, 1992, asking for a complete trial transcript of case #CIV-84-1389T, United States v Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that much. Laughed and said, "You will be able to see what Judge Telesca says". Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in

1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have $550 before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995. On information and belief, Judge Telesca is responsible in regard to the conduct and work ethics of all of his Federal Court personnel.

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bevins Action" we were supposed to be able to present evidence. This was a denial of due process and equal protection of the law. We take the position that there has been fraud and conspiracy, and that their misconduct created severe emotional distress and a denial of due process never heard of. He stated there had been fraud, conspiracy, denial of due process etc. He then helped us file a civil suit. Judge Larimer dismissed it, said we had no case. Judge Larimer denied us an opportunity to "present evidence".

EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

It is a fact that in 1983 there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was 3637. That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the

BEST AVAILABLE COPY

government agents that worked against her, her farm could have produced the following. In 1986, 36 farrowing stalls were added on the Florence J. Carney farm.

	YEAR-	# *STALLS--PIGS PER STALL*---		TOTAL
Actual	*1983*	*52*	*69.9*	*3,637*
Projected	*1987*	*88*	*69.9*	*6,151*
Projected	*1988*	*88*	*62.5*	*5,500*
Projected	*1989*	*88*	*65. 0*	*5,720*
Projected	*1990*	*88*	*69.9*	*6,151*
Projected	*1991*	*88*	*62.5*	*5,500*
Projected	*1992*	*88*	*65.O*	*5,720*
Projected	*1993*	*88*	*69.0*	*6,072*
Projected	*1994*	*88*	*62.0*	*5,456*
Projected	*199S*	*88*	*65. 0*	*5,720*
Projected	*1996*	*88*	*64.0*	*5,632*
			TOTAL ANIMALS	57,622

If there had been support when the FmHA agents knew the family worked very hard, produced top quality animals and sacrificed to expand the operation, these figures would be very realistic, possibly even better. Joyce L. Acomb could have paid her creditors, could have purchased her mother-in-law's life estate (Florence J. Carney) that sold at a very low price in approximately 1991.

AGAINST ALL DEFENDANTS MENTIONED HEREIN

Fraud, conspiracy, discrimination, abuse of prosecution, denial of equal protection of the law, denial of due process, contractual interference, fraud in contract, wire and mail fraud, deliberate indifference, perjury, denial of interstate commerce, personal threats and neglect of duty.

JURISDICTION

This Court has jurisdiction in this matter under 28 U.S.C. Sec. 1331, on the basis of federal questions raised as to violation of the rights of Joyce L. Acomb and Charles B. Acomb. Also, under 42 U.S.C. 1983, 1981, 1982, 1985 (2), (3), the Bevins doctrine, Bevins v Six Unknown Federal Agents. 403 U.S. 388, (1971) and 18 U.S.C.A. 1964 (c), 1962 (3), all violation of 4th Amendment 5th, 6th, 8th and 14th Amendments.

JURY DEMAND

Plaintiffs in this counterclaim complaint, Joyce L. Acomb and Charles B. Acomb, demand a jury for the trial of all issues and claims set forth in these claims which are triable by jury.

WHEREFORE, the plaintiffs Joyce L. Acomb and Charles B. Acomb, in this counterclaim complaint demand judgment against the defendants as follows:

Compensatory damages in the amount of dollars necessary to

1. Pay all of Joyce L. Acomb and Charles B. Acomb's creditors in full.

2. Order Farmers Home Administration to declare Joyce L. Acomb's farm free and clear of all debt.

3. Refurbish farm buildings and yards.

4. Replace 2,500 feeder pigs and 250 sows and boars.

5. Furnish farm with new line of equipment.

6. Purchase Galney Farm (Florence J. Carney Estate).

WHEREFORE, the plaintiffs ask for judgment in punitive damages to purchase 6,000 acres of land adjacent to Joyce L. Acomb's farm, and equipment to work it. Any further relief as the Court may deem just and proper.

DATED: September 30, 1996.

Respectfully submitted,

JOYCE L. ACOMB

CHARLES B. ACOMB

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

INDEX NO.
96-CV-6229

vs

AMENDED
ANSWER

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C, D, E, F.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiff

INDEX
No.96-CV-6229

vs

AMENDED
AFFIRMATIVE
DEFENSE AND
COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA);
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING; PIERRE LABOURDETTE;
CHRISTOPHER TAFFE; JUDGE DAVID G.LARIMER;
JUDGE ;MICHAEL A. TELESCA;
and John Does and Mary Roes,

Defendants.

AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

I. PRELIMINARY STATEMENT

In 1978, the Acomb family farm received a loan from FmHA to improve and expand their building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach their immediate goal of selling three thousand finished hogs per year. The first year,

1978, there were 689 head sold for $80,231. In 1979, the numbers increased to *905* head for $90,112.. In 1980, due to the shortage of money and increased number of animals sold, the Acomb's oldest daughter, Lori, came home to work on the farm. She had graduated from the Chamberlain School of Retailing, and was just promoted to Assistant Manager by the Ames Department Store at Arcade, NY. While receiving over $300 per week at that employment, she was paid by her mother, Joyce, $50 per week plus board for farm work. Their son Brent, who Had

started a career in the US Air Force, I think in 1978, came home in 1980 on an early discharge and worked for $50 per week and board. Their youngest daughter Renee, sometime later quit college and came home to work for the same pay. In 1980 the farm produced 1569 market hogs for $148,139. In 1981 the production was 1968 animals for $187,842. The number increased again in 1982 to 2887 animals sold for $284,711.

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1. $17,471. was applied to the outstanding balance on the 1980 crop loan.

2. A check, payable jointly to Mrs. Acomb and the FmHA was applied to the FmHA loan. Mrs. Acomb immediately upon receiving

the check in the amount of $32,439., left Mr. Hauryski's office and proceeded directly to the FmHA office, which was located on the second floor of the same building. The check was delivered personally to Mr. William Humphrey, who was then the supervisor. Mr. Humphrey was not present during the year 1980 through 1981. Mr. Humphrey immediately applied the entire amount to the outstanding balance on Mrs. Acombs FmHA loan. Joyce L. Acomb did not receive one cent" of the CCC loan for use at her own discretion.

As before, Mrs. Acomb requested that Mr. Hauryski set up a payment schedule for her to repay the loan of 1981. Mr. Hauryski provided her with a repayment schedule after the December 1, 1981 disbursement of the loan and setup each payment to coincide with her anticipated use of the corn, so that the balance of corn remaining could secure the loan balance at that time. Mrs. Acomb's understanding of the repayment schedule was that it was based upon the sale of her hogs, and payments would be larger in those months for which she predicted she would sell a greater number of hogs. Mr. Hauryski however thought that he believed the repayment schedule to be based on a redemption formula, under which Mrs. Acomb could redeem bushels of corn only as she paid for them. This apparent misunderstanding as to the terms of the repayment schedule precipitated the dispute between the FmHA and the ASCS.

In January of 1982, Mrs. Acomb began feeding her hogs the corn that served as collateral for the 1981 CCC loan. Suspecting that to be the case, on January 22, 1982, a county executive director-trainee, made a spot check of the corn subject to the 1981 loan and found that approximately 3,000 bushels had been fed from the bin. On March 15, Mrs. Acomb made her first payment on the 1981 CCC loan totaling $2,062. On the same day, Mr. Hauryski wrote her a letter requesting that she discontinue feeding from the bin until she could bring her account current with CCC. On March 17, 1982, Mr. Hauryski measured the corn and found that approximately 7,354 bushels remained in the bin. Concerned that Mrs. Acoxnb's loan was no longer fully secured, he wrote Joyce

Acomb and asked her to pay the full amount, or $31,787. before she fed anymore corn out of the bin.

At the time Mr. Hauryski notified her that she would have to discontinue feeding the corn, Mrs. Acomb was attempting to negotiate a new annual operating loan with FmHA. In her application, as she had done in previous years, she disclosed the outstanding loan from CCC. Moreover, Mr. Humphrey knew that she had the CCC loan because he had applied the proceeds of that loan to FmHA accounts the very same day it was disbursed. Mrs. Acomb asked Mr. Humphrey if she could include payment of the CCC loan in her budget, and he refused, telling her that she could not use FmHA finds to pay that debt. She visited Mr. Hauryski to discuss the difficulty she was having repaying the loan. After an extended discussion, Mr. Hauryski informed her that if she did not repay the CCC loan, he would have no choice but to sue her. Immediately after that discussion, she went upstairs to Mr. Humphrey's office to tell him what Mr. Hauryski had just said, and his response was in substance, "So what! Let him sue!" Mrs. Acomb then asked Mr. Humphrey if she could buy from CCC the corn that rēmained in her bin because she could not buy it at a better price and she needed it immediately to feed her hogs. Mr. Humphrey agreed to this, but reiterated that none of the operating loan funds could be used to pay for the CCC corn already fed, but only for the

existing corn in her bin. The day before authorizing payment for the remaining corn, he insisted that Mrs. Acomb sign a loan agreement in which she agreed not to incur capital expenses in excess of $1,000. without the written approval of FmHA, and to continue to deposit all hog checks in FmHA supervised bank account. This Loan Agreement was typed on plain typing paper and imposed additional restrictions not provided for in the basic FmHA Agreement in force, nor in the C.F.R.

Not only did Mr. Humphrey control the money Mrs. Acomb received under the FmHA loan program, he now also controlled all of her income from hog sales, which he required her to deposit in a supervised bank account, and in addition would only

permit a maximum expenditure of $1,000. for capital expenses. In order to spend any of the money in her operating account, Mrs. Acomb required permission from Mr. Humphrey on an item-by-item basis. He had demanded complete authority to release the funds for any proposed expenditure. Mr. Humphrey stated very clearly, that if Mrs. Acomb used any of the money to pay CCC for the corn, he would 'liquidate her immediately". Mr. Humphrey also knew that the Acomb farm assets exceeded the debt by $101,769. In many instances, records will show that FmHA will sponsor new accounts with hundreds of thousands of dollars of debt above their assets.

It is also a fact that in Mr. Humphrey's notes, recording a telephone conversation on June 18, 1982 with Paul Dendis, an FmHA official, from whom Mr. Humphrey frequently sought advice, he states that Mr. Dendis "suggested that FmHA pay CCC a prorated share of any payments from sale of hogs in order that CCC get paid also". Despite CCC's efforts to cooperate, and Mr. Humphrey's own agency's recommendation, Mr. Humphrey refused to share any of the proceeds from the sale of hogs with the CCC.

Mr. Humphrey also insisted that Joyce Acomb keep an itemized record of every check issued and for what purpose. She had to present this record to him personally once a month. Mr. Humphrey would then co-sign her hog check from the Hatfield Packing Co. in Pennsylvania. This was the best market for "high grade hogs" in the north east, and a considerable advantage monetarily.

On 10/6/83, Mr. Humphrey made the following notation in his records:

> 10-6-83 Farm visit, the entire Acomb family was on hand. Inspected and inventoried hogs this date. Joyce has good set of records on this inventory.
>
> feeders all ages from just born piglets to 220# on hand---------- 2512
> Sows and Gilts on hand----------288
>
> Ave. pigs weaned per sow from 1-1-83 to 9-30-83 = 8.4

> The price is poor right now @$.43 base. Joyce is working at forward contracting soybean, thinks has enough corn on hand until PIK corn becomes available. Discussed financial situation with them including Bruce who sat in kitchen. I was impressed by the thrifty trim well grown hogs being produced here. Released a hog check to purchase corn.

The threat of liquidation and having to face a law suit in regard to CCC obligation created "mental and emotional distress", was an abusive governmental action, was discriminatory and was contractual interference. Mr. Humphrey also ignored the fact that the two agencies have a "memorandum of understanding" at the national level.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In 1983, the farm produced 3,637 animals that grossed $388,275. In 1984, the production was 3,266 and grossed $396,134. At this time, the Acomb family was looking to expand the operation by using a dairy barn owned by Charles B. Acomb's mother, Florence J. Carney. There was room for 36 to 40 additional farrowing stalls that would allow an increase of approximately 2,000 market hogs, and or sale-able feeder pigs. We would sell feeder pigs from the home farm also so as to allow more room for additional numbers.

Late in 1984, the Agricultural Stabilization and Conservation Department (ASCS), started a civil suit against Joyce L. Acomb to collect monies that Mr. Humphrey refused to allow her to pay. This meant additional mental and emotional distress as the family thought that any government body could liquidate them as Mr. Humphrey had threatened. Lawyers had to be hired etc.

THIRD AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In the early months of 1985, Joyce L. Acomb was turned down in regard to an operating loan by Mr. Humphrey. On information and belief; Joyce started an appeal process following his decision. On information and belief, the appeal process took several months before it finally arrived on the desk of the administrator in charge at Syracuse, NY. On information and belief; there are to be no interruptions concerning the operation of the Joyce L. Acomb farm until the appeal process is complete. The rules are identified in the Code of Federal Regulations.

On or about June 2, 1995, Joyce L. Acomb received a letter dated May 31, 1985, from William E. Humphrey, Supervisor of the Livingston County FmHA It is identified as follows:

> Dear Mrs. Acomb:
> This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.
>
> The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts.
>
> Sincerely,
>
> WILLIAM E. HUMPHREY
> County Supervisor

This letter was devastating in that we knew Mr. Humphrey had on many occasions abused his power, with-in the knowledge of his superiors and on information and belief was never disciplined by any superior at any time. His superiors did at one time move him down state for a period of time after

hearing farmer complaints. On information and belief; after he was moved, Mr. Humphrey filed a lawsuit against the government.

Mr. Humphrey told Joyce L. Acomb on May 14, 1984, that she had to sign an agreement, "Consent To Payment of Proceeds From Sale of Products". That meant that the hog checks were to be made out jointly to FmHA and Joyce L. Acomb by Hatfield

Packing Co. In other words, Mr. Humphrey was forcing Joyce L. Acomb to allow him to keep all of the proceeds. This meant that 2,327 hogs would be neglected. No money for labor, electricity, food for family etc. We will reiterate once more that Mr. Humphrey was in violation of the Code of Federal Regulations. Failure to give proper notice which was a violation of due process, and last but not least, in violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota.

The specific directives were as follows:

1. Page 33, 2(b). That the defendants,(FmHA), their agents, subordinates and employees are enjoined from proceeding to liquidate, or to terminate the living and operating allowances previously determined in the administration of any existing loan.

2. Page 34 C. That the defendants, their agents, subordinates, and employees are enjoined from;
   -accelerating the indebtedness of the plaintiff
   -foreclosing on the real property or chattels of the plaintiffs
   -demanding voluntary conveyance by the plaintiff
   -repossessing chattels of the plaintiff or in any way proceeding against or depriving the plaintiffs of property in which the defendants have a security interest.

This was in effect until 1987, and every FmHA official was privy to this information. At that time, we were under the impression that Mr. Humphrey was authoring this devastating letter on his own, but we were wrong. Some years later, I believe in 1994, we became aware of a notation by Mr. Humphrey in his handwriting and is as follows:

5-30-85 p/c C/F/P Paul Dendis

Discussed with him releasing hog checks as I have been doing, pending outcome of appeal, since I was under the impression that this was consistent with Coleman v Block. C/F/P advises that if I did not sign the f + h (Farm and Home Plan), then I did

not agree to release and should send Mrs. Acomb a letter telling her there will be no more releases. This advice concurs with OGC advice to C/F/P. (OGC is Office of General Counsel, lawyer Charles Volsing's advice to C/F/P Chief of Farm Programs, Paul Dendis.)

W.E.H. (William E. Humphrey)

Joyce L. Acomb had to make a decision either to follow the directive of Supervisor William E. Humphrey and be driven out of business, or follow the directives of the Code of Federal Regulations, and or follow the directives of Federal Judge Van Sickle through a Court Order. She chose the later. She had no alternative but to seek out other markets that resulted in lower prices. From 6/5/85 to 9/13/86 the farm lost $17,371.27 because the Hatfield Packing Co. was not an available market. In 1985 due to poor boar power and monies not available, the farm sold 2,231 hogs for $212,996. In 1986 there were 2,517 hogs sold for $284,057., and in 1987 there were 3,406 sold for $376,929.

The devastating letter sent by William E. Humphrey, Livingston County Supervisor of the Farmers Home Administration was irrefutable proof that he, OGC lawyer Charles Volsing and CEP Paul Dendis, the FmHA Office in Syracuse and the Washington Office were all in contempt of a Federal Court Order as well as in contempt of the Rules of the C.F.R. This act expanded mental and emotional distress to all family members, and was another abusive governmental action. It was an act of violation of due process as well as an obvious act of malice and denial of equal protection of the laws.

It is a fact that every item found in the Livingston County FmHA Office file is copied and sent to a file in the State Office at Syracuse, NY, and another is sent to the Washington Office. Each office has the same records and knowledge in regard to any and all activities.

FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Sometime in October 1988, Joyce I. Acomb was served a summons in a criminal case. She had to appear in Rochester, NY in front of US Magistrate, Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

They did not ask Joyce to plead, which would have been not guilty. She was fingerprinted, photographed and put on $5,000. bond. The following day, on October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating":

DANSVILLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL

> A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.
>
> Joyce Acomb of 8317 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.
>
> Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October 1987.

Joyce L. Acomb was accused of selling $650,000 between June 1985 and October 1987. Her records show the figure was closer to $700,000.

According to NY State Labor figures, Joyce could have paid herself over $25,000 a year, but she always waived this opportunity. These accusations were all false,

and the mental and emotional distress continued. There was discrimination, conspiracy and other abusive governmental actions.

FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Joyce received a letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury.

On June 8, 1990, Charles B. Acomb took a complete set of records to Joyce's lawyer in Buffalo. Charles then went to Rochester, NY and delivered a duplicate copy to US Attorney Office for US Attorney Charles Pilato. On August 31, 1990, Joyce received a letter from Assistant US Attorney, Christopher Taffe as follows:

Dear Ms. Acomb

Enclosed please find the letter dated August 24, 1990 regarding the above-captioned case. This letter indicates that you are no longer represented by Mr. LaTona. Please advise me no later than September 7, 1990 who is representing you. If I do not hear from you by that date, this case will be presented a federal grand jury and you will be indicted.

Very truly yours,

DENNIS C. VACCO
United States Attorney

By: CHRISTOPHER V. TAFFE Assistant United States Atty.

On information and belief; sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, INY. There was to be a pre-trial conference on September 17, 1990. Charles B. and Joyce L. Acomb arrived with Joyce lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's Courtroom and waited. Soon Assistant US Attorney Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyer, William Muoio came out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Acomb very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest.

The trial began on 09/18/90 and a decision was recorded on September 25, 1990, stated as follows:

> IT IS ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint is dismissed

Joyce received a letter dated October 4, 1990 from her lawyer and he stated:

> Dear Joyce:
>
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Joyce Acomb was informed by her attorney William Muoio that the government was appealing her civil trial decision. This means more expense. Joyce had paid out $15,500 for two cases and still owes $7,101.74 plus interest.

After many letter conferences and motions, US Attorney Leslie K. Lagomarcina submitted a Voluntary Dismissal dated January 29, 1991. This was filed in the United States Court of Appeals, Second Circuit on January 29, 1991.

On or about March 4, 1991, Charles B. and Joyce L. Acomb appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan: Dear Mr. Acomb: I sent your inquiry to the appropriate Executive agency and they have produced the enclosed response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator. ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. **We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security.** Because this case is before the Court, we cannot comment on it at this timed We hope you find this information helpful in responding to your constituent. Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home Administration, Washington, DC.

The information given to a United States Senator was false and was perjury. All of the decisions by the governmental employees were causing extreme

emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb's face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca's Court on February 20, 1992, asking for a complete trial transcript of case #C1V-84-1389T, United States v. Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that much. Laughed and said, "You will be able to see what Judge Telesca says".

Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in 1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have $550 before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995.

The Acombs' have telephone records showing that they had tried to consummate an agreement with a member of Judge Telesca's Court in regard to preparing a complete record for Case No. CIV-84-1389T. In the year 1992, we made calls to a member of Judge Telesca's Court, and or, the Clerk's Office on 03/03/92, 03/04/92, 03/05/92 and 12/08/92. In the year 1993, we made calls on 02/24/93 @ *8:58 AM.,* 02/24/93 @ 9:00 AM., 03/02/93, 04/10/93, 04/12/93, 04/14/93 @9:09 A.M., 04/14/93 @ 10:20 A.M., 04/20/93, 04/23/93 @ 9:31 A.M., 04/23/93 @ 9:59 AM., 04/26/93, 08/02/93, 08/1A/93, 09/27/93, 09/28/93, 12/16/93 *@8:55AM.* and 12/16/93 @9:14 A.M. In the year 1994, we made calls on *05/04/94,* 09/06/94, 09/08/94, 09/14/94, 09/20/94 and 12/23/94. In the year 1995, we made calls that were within Opta-Call, which is a grouping of numbers not identified. This is a money saving option through our telephone service. Consequently, we have no individual records during 1995.

On information and belief, Judge Telesca is responsible in regard to the conduct and work ethics of all of his Federal Court personnel.

On information and belief, Judge Michael A. Telesca has refused to allow any farmers in his district to present evidence in any, and all, individual cases.

We take the position that there has been fraud and conspiracy, malfeasance, nonfeasance, obstruction of justice, discrimination, and that their misconduct created severe emotional distress and a denial of due process.

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bivens Action" we

were supposed to be able to present evidence. This was a denial of due process and equal protection of the law.

EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

It is a fact that in 1983 there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was 3,637. That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the government agents that worked against her, her farm could have produced the following. In 1986, 36 farrowing stalls were added on the Florence J. Carney farm.

	YEAR	*# OF STALLS*	*# BORN PER STALL*	*TOTAL*
Actual	*1983*	*52*	*69.9*	*3,637*
Projected	*1987*	*88*	*69.9*	*6,151*
Projected	*1988*	*88*	*62.5*	*5,500*
Projected	*1989*	*88*	*65.0*	*5,720*
Projected	*1990*	*88*	*69.9*	*6,151*
Projected	*1991*	*88*	*62.5*	*5,500*
Projected	*1992*	*88*	*65.0*	*5,720*
Projected	*1993*	*88*	*69.0*	*6,072*
Projected	*1994*	*88*	*62.0*	*5,456*
Projected	*1995*	*88*	*65.0*	*5,720*
Projected	*1996*	*88*	*64.0*	*5,632*
		TOTAL ANIMALS		57,622

If there had been support when the FmHA agents knew the family worked very hard, produced top quality animals and sacrificed to expand the operation, these figures would be very realistic, possibly even better. Joyce L. Acomb could have paid her creditors, could have purchased her mother-in-law's life estate (Florence J. Carney) that sold at a very low price in approximately 1991.

NINTH AFFIRMATIVE DEFENSE

On 01-27-89, William E. Humphrey refused again to sign any papers that would allow Charles B. Acomb and Joyce L. Acomb any relief He also claimed we diverted large amounts of money to our own use, which was and is a false statement.

AGAINST ALL DEFENDANTS MENTIONED HEREIN

Fraud, conspiracy, discrimination, abuse of prosecution, denial of equal protection of the law, denial of due process, contractual interference, fraud in contract, wire and mail fraud, deliberate indifference, perjury, denial of interstate commerce, malfeasance, nonfeasance, obstruction of justice, personal threats, neglect of duty and breach of trust.

JURISDICTION

This Court has jurisdiction in this matter under 28 U.S.C. Sec. 1331, on the basis of federal questions raised as to violation of the rights of Joyce L. Acomb and Charles B. Acomb. Also, under 42 U.S.C. 1983, 1981, 1982, 1985 (2), (3), the Bivens

doctrine, Bivens v Six Unknown Federal Agents, 403 U. S. . 388, (1971) and 18 U.S.C.A. 1964 (c), 1962 (3), all violation of 4tlffull. Amendment 5th, 6th, 8th and 14th Amendments.

JURY DEMAND

Plaintiffs in this counterclaim complaint, Joyce L. Acomb and Charles B. Acomb, demand a jury for the trial of all issues and claims set forth in these claims which are triable by jury.

WHEREFORE, the plaintiffs Joyce L. Acomb and Charles B. Acomb, in this counterclaim complaint demand judgment against the defendants as follows: Compensatory damages in the amount of dollars necessary to

1. Pay all of Joyce L. Acomb and Charles B. Acomb's creditors in fill.

2. Order Farmers Home Administration to declare Joyce L. Acomb's farm free and clear of all debt

3. Refurbish farm buildings and yards.

4. Replace 2,500 feeder pigs and 250 sows and boars.

5. Furnish farm with new line of equipment.

6.Purchase Galney Farm (Florence J. CarneyEstate).

WHEREFORE, the plaintiffs ask for judgment in punitive damages to purchase 6,000 acres of land adjacent to Joyce L. Acomb's farm, and equipment to work it. Any further relief as the Court may deem just and proper.

DATED: October 24, 1996.

Respectfully submitted,

JOYCE L. ACOMB

CHARLES B. ACOMB

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs

INDEX NO.
97-CV-0022C(Sc)

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Defendants.

ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, *35,* 36, 38, 49 A, B, C, D, E, F.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiffs,

INDEX NO.
97-CV-0022C(Sc)

vs

MOTION FOR AMENDMENT OF AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA);
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING; PIERRELABOURDETTE;
CHRISTOPHER TAFFE; JUDGE DAVID G.
LARIMER; JUDGE MICHAEL A. TELESCA;
and John Does and Mary Roes,

Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Affirmative Defense and Counterclaim for the following reasons:

1. The defendants status as non-learned, non-lawyer litigants, are at a severe disadvantage in organizing and implementing all of the necessary information in a normal time frame.

2. Defendants would be stifled in exercise of their right to access this Court if relief is not granted.

3. As the Court well knows, when even a competent lawyer is Shepardizing different cases he or she finds new revelations.

4. Example: We should have known that each defendant should have been served individually, but we either forgot or didn't know. I, Charles B. Acomb, did realize this after we filed the Amended papers, but it was then too late.

5. We knew that a number of C.F.R. Rules bad been ignored by the government agents, but did not have time or realize they should have been implemented in the counterclaim.

6. We did realize that to give ourselves the best defense, we would have to have access to the complete file kept by the Livingston County FmHA Office.

7. We contacted the new office in Warsaw, NY, and we were told by their representative, Joanne Crofman, that Joyce L. Acomb would have to request personally for an opportunity to view the file. Joyce sent a letter to U.S. Attorney Jane B. Wolfe, making a request. See EXHIBIT 1.

8. Please see EXHIBIT 11, a copy of a letter by Charles B. Acomb, sent to Jane B. Wolfe, U.S. Attorney, on September 23, 1996. Charles B. Acomb had also left a message on Jane B. Wolfe's telephone answering service asking to be allowed to review the file. She may have tried to contact us. Our telephone was out of order for 4 days.

9. We had also received a letter from a person in Phoenix, Arizona on or about October 25, 1996, wherein he states that he is available to help any and all FmHA borrowers in regard to their rights, etc. We had a telephone conversation with him and he needs to see a copy of the complete file in order to make any evaluation.

10. We pray that the Honorable Court take into consideration the United States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While Gillispie v Civilette, 629 F2 637 (1980), and Haines v. Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion, we again pray that the Court still grant us relief.

11. Defendants pray that the Court will Order the government to give us an opportunity to copy the complete file.

12. Defendants pray that the Honorable Court will with discretion allow us time to copy file, send file to persons that will help us evaluate file, time to reorganize and add to an Amended Answer, Affirmative Defense and Counterclaim.

DATED: January 21, 1997.
Dansville, NY

JOYCE L. ACOMB

CHARLES B. ACOMB

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof, the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. 63 N.
Dansville, NY 14437
Tel: (716) 335-6804

Sworn to before me this
21st day of January, 1997.

NOTARY

DEBRA G. GQO DELL. NOTARY PUBLIC
State of N.Y.,County of Livingston
My Comm. Expires June 30, 1998.

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion, in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe
Assistant US Attorney
Western District of New York
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

on this 21 st day of January, 1997.

CHARLES B. ACOMB

8317 State Rte. 63 N.
Dansville, NY 14437
September 23, 1996

UNITED STATES ATTORNEY
Western District of New York
Jane B. Wolfe, Esq.
138 Delaware Avenue
Federal Centre
Buffalo, NY 14202

Dear Ms. Wolfe:

I just got a call from JoAnn Crofman at about 10:55 this morning, telling me that I have to request personally from you an opportunity to view our file. Would you please allow us this opportunity at your earliest convenience.

Sincerely,

Joyce L. Acomb

EXHIBIT 1

8317 State Rte. 63 N.
Dansville, NY 14437
September23, 1996

UNITED STATES ATTORNEY
Western District of New York
Jane B. Wolfe, Esq.
138 Delaware Avenue
Federal Centre
Buffalo, NY 14202

Dear Jane:

It would seem that litigation for non-lawyer litigants is very difficult. The fear of rejection is constant. Consequently, attempting to organize a correct affirmative defense is very time consuming. I'm sure you are aware that there are legal decisions that demand that a defendant must plead good faith as an affirmative defense. That to me means that for every allegation, one must have correct documentation, not just memory. We remember documentation that seems to be missing.

Today I contacted the FmHA Office in Warsaw, NY, in regard to our file. We may, or may not, be able to review it this week. Would you please give us an additional thirty (30) days to answer? There will be no harm, I'm sure you could agree.

Question: In Federal Court can any litigant amend an answer to a Foreclosure Action within thirty (30) days, or do they have to Ask Leave of The Court?

Sincerely,
Charles B. Acomb

EXHIBIT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

INDEX NO.
97-C V-0022C (SC)

vs.

AMENDED
AMENDED ANSWER

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Defendants.

AMENDED ANSWER

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

FIRST AFFIRMATIVE DEFENSE

I. Admits paragraphs I through 10, 12 through 21, 23 through 26, 28 through 30, 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 11,22, 27, 31, 33, 35, 36, 38 and 49 A., B, C, D, E and F.

SECOND AFFIRMATIVE DEFENSE

3. The complaint fails to state a claim against the defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

4. The claims set forth herein are barred by applicable statutes of limitation.

5. The alleged right of action set forth in the complaint did not accrue within six years before the commencement of this action.

FOURTH AFFIRMATIVE DEFENSE

6. Upon information and belief; the plaintiff has not complied with applicable law, rules and standard operating procedures with respect to the loans in question and has not granted to the debtors forbearance, modifications and restructuring to which they are entitled pursuant to applicable law, regulations and standard operating procedures of the Farmers Home Administration. As such, plaintiff has denied the defendants the equal protection and treatment to which they are entitled under applicable law.

FIFTH AFFIRMATIVE DEFENSE

7. Plaintiff has not complied with it's obligations under the New York Uniform Commercial Code with respect to its duty to act in good faith and deal fairly in the enforcement and exercise of its rights under the promissory notes in question.

WHEREFORE, the defendants respectfiully request judgment dismissing the complaint herein with prejudice and direct the Farmers Home Administration to discharge of record all mortgages referred to in the complaint herein.

DATED: December 29, 1997.
Dansville, New York

Joyce L. Acomb

Charles B. Acomb

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof, the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true. -

Charles B. Acomb

Joyce L. Acomb

Sworn to before me this

29 day

Debra

of December, 1997.

NOTARY PUBLIC

DEBRA G. GOODELL,
NOTARY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiffs,

INDEX NO.
97-C V-0022C(Sc)

vs

AMENDED, AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA}
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING PIERRE LABOURDETTE
CHRISTOPHER TAFFE; JUDGE DAVID G.
LARIMER; JUDGE MICHAEL A. TELESCA;
NANCY NEU and John Does and Mary Roes,

Defendants.

Plaintiffs come forward with Cross-Claim and Affirmative Defense praying for damages against those above named defendants.

PARTIES

1. Plaintiffs Joyce L. Acomb and Charles B. Acomb, are United states citizens, with an address of 8317 State Rte. 63 N., Dansville, New York 14437.

2. Defendant Farmers Home Administration is a creation of the United States government mandated to follow statute law as prescribed in complaint whose address is 129 Main Street, Leicester, New York 14481.

3. Defendant William E. Humphrey, is sued individually and is a United States citizen, with an address of: 129 Main Street, Leicester, New York 14481.

4. Defendant Paul Dendis is sued individually and is a citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202.

5. Defendant Charles Volsing is sued individually and is citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202.

6. Defendant Pierre Labourdette is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

7. Defendant Christopher V. Taffe is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

8. Judge David G. Larimer is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

9. Judge Michael A. Telesca is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

10. Defendant Nancy Neu is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

I. PRELIMINARY STATEMENT

In 1978, the Acomb family farm received a loan from FmHA to improve and expand their building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach their immediate goal of selling three thousand finished hogs per year. The first year, 1978, there were 689 head sold for $80,231. In 1979, the numbers increased to 905 head for $90,112. In 1980, due to the shortage of money and increased number of animals sold, the Acomb s oldest daughter, Lori, came home to work on the farm. She had graduated from the Chamberlain School of Retailing, and was just promoted to Assistant Manager by the Ames Department Store at Arcade, NY. While receiving over $300 per week at that employment, she was paid by her mother, Joyce, $50 per week plus board for farm work. Their son Brent, who had started a career in the US Air Force, I think in 1978, came home in 1980 on an early

discharge and worked for $50 per week and board. Their youngest daughter Renee, sometime later quit college and came home to work for the same pay. In 1980 the farm produced 1,569 market hogs for $148,139. In 1981 the production was 1,968 animals for $187,842. The number increased again in 1,982 to 2,887 animals sold for $284,711.

Joyce L. Acomb, the owner and working manager of their farm, was the winner of the 1982 New York State corn growing championship that was conducted by the National Corn Growers Association. This was in the non-irrigated, Class A section of the contest. The yield was 172.22 bushels per acre, or 4.82 tons per acre.

FIRST AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In 1980 and 1981, in addition to the FmHA loans, Joyce L. Acomb received "farm storage loans" from the Commodity Credit Corporation (CCC). In November of 1980, Joyce Acomb received $46,682.30 from CCC, of which *$5,528* was applied to the repayment of a prior CCC loan taken by the defendants former husband, Charles B. Acomb. The remainder $41,143. was issued jointly to Ms. Acomb and the FrnHA. The FrnHA immediately applied the CCC loan proceeds to an outstanding FrnHA loan. Collateral for the 1980 CCC loan consisted of stored corn from the 1980 crop. Mrs. Acomb requested and received a repayment schedule for the 1980 CCC loan and made payments accordingly. Joyce L. Acomb found the manager of CCC, Joseph Hauryski, easy to deal with.

On December 1, 1981, Mrs. Acomb entered into another loan agreement with CCC for a 1981 farm storage loan, pledging her 1981 corn crop as collateral. The new CCC loan was $49,911. disbursed as follows:

1. $17,471. was applied to the outstanding balance on the 1980 crop loan.

2. A check, payable jointly to Mrs. Acomb and the FmHA was applied to the FmHA loan.

Mrs. Acomb immediately upon receiving the check in the amount of $32,439., left Mr. Hauryski's office and proceeded directly to

the FmHA office, which was located on the second floor of the same building. The check was delivered personally to Mi-. William Humphrey, who was then the supervisor. Mr. Humphrey was not present during the year 1980 through 1981. Mr. Humphrey immediately applied the entire amount to the outstanding balance on Mrs. Acomb's FmHA loan. Joyce L. Acomb did not receive "one cent" of the CCC loan for use at her own discretion.

As before, Mrs. Acomb requested that Mr. Hauryski set up a payment schedule for her to repay the loan of 1981. Mr. Hauryski provided her with a repayment schedule after the December 1, 1981 disbursement of the loan and setup each payment to coincide with her anticipated use of the corn, so that the balance of corn remaining could secure the loan balance at that time. Mrs. Acomb's understanding of the repayment schedule was that it was based upon the sale of her hogs, and payments would be larger in those months for which she predicted she would sell a greater number of hogs. Mr. Hauryski however thought that he believed the repayment schedule to be based on a redemption formula, under which Mrs. Acomb could redeem bushels of corn only as she paid for them. This apparent misunderstanding as to the terms of the repayment schedule precipitated the dispute between the FrnHA and the ASCS.

In January of 1982, Mrs. Acomb began feeding her hogs the corn that served as collateral for the 1921 CCC loan. Suspecting that to be the case, on January 22, 1982, a county executive director-trainee, made a spot check of the corn subject to the 1981 loan and found that approximately 3,000 bushels had been fed from the bin. On March 15, Mrs. Acomb made her first payment on the 1981 CCC loan totaling $2,062. On the same

day, Mr. Hauryski wrote her a letter requesting that she discontinue feeding from the bin until she could bring her account current with CCC. On March 17, 1982, Mr. Hauryski measured the corn and found that approximately 7,354 bushels remained in the bin. Concerned that Mrs. Acomb's loan was no longer fully secured, he wrote Joyce

Acomb and asked her to pay the full amount, or $31,787. before she fed anymore corn out of the bin.

At the time Mr. Hauryski notified her that she would have to discontinue feeding the corn, Mrs. Acomb was attempting to negotiate a new annual operating loan with FmHA. In her application, as she had done in previous years, she disclosed the outstanding loan from CCC. Moreover, Mr. Humphrey knew that she had the CCC loan because he had applied the proceeds of that loan to FmHA accounts the very same day it was disbursed. Mrs. Acomb asked Mr. Humphrey if she could include payment of the CCC loan in her budget, and he refused, telling her that she could not use FmHA finds to pay that debt. She visited Mr. Hauryski to discuss the difficulty she was having repaying the loan. After an extended discussion, Mr. Hauryski informed her that if she did not repay the CCC loan, he would have no choice but to sue her. Immediately after that discussion, she went upstairs to Mr. Humphrey's office to tell him what Mr. Hauryski had just said, and his response was in substance, "So what! Let him sue!" Mrs. Acomb then asked Mr. Humphrey if she could buy from CCC the corn that remained in her bin because she could not buy it at a better price and she needed it immediately to feed her hogs. Mr. Humphrey agreed to this, but reiterated that none of the operating loan finds could be used to pay for the CCC corn already fed., but only for the existing corn in her bin. The day before authorizing payment for the remaining corn, he insisted that Mrs. Acomb sign a loan agreement in which she agreed not to incur capital expenses in excess of $1,000. without the written approval of FmHA, and to continue to deposit all hog checks in FmHA supervised bank

account. This Loan Agreement was typed on plain typing paper and imposed additional restrictions not provided for in the basic FmHA Agreement in force, nor in the C.F.R.

Not only did Mr. Humphrey control the money Mrs. Acomb received under the FmHA loan program, he now also controlled all of her income from hog sales, which he required her to deposit in a supervised bank account, and in addition would only

permit a maximum expenditure of $1,000. for capital expenses. In order to spend any of the money in her operating account, Mrs. Acomb required permission from Mr. Humphrey on an item-by-item basis. He had demanded complete authority to release the funds for any proposed expenditure. Mr. Humphrey stated very clearly, that if Mrs. Acomb used any of the money to pay CCC for the corn, he would "liquidate her immediately". Mr.. Humphrey also knew that the Acomb farm assets exceeded the debt by $101,769. In many instances, records will show that FmHA will sponsor new accounts with hundreds of thousands of dollars of debt above their assets.

It is also a fact that in Mr. Humphrey's notes, recording a telephone conversation on June 18, 1982 with Paul Dendis, an FmHA official, from whom Mr. Humphrey frequently sought advice, he states that Mr. Dendis "suggested that FmHA pay CCC a prorated share of any payments from sale of hogs in order that CCC get paid also". Despite CCC's efforts to cooperate, and Mr. Humphrey's own agency's recommendation, Mr. Humphrey refused to share any of the proceeds from the sale of hogs with the CCC.

Mr. Humphrey also insisted that Joyce Acomb keep an itemized record of every check issued and for what purpose. She had to present this record to him personally once a month. Mr. Humphrey would then co-sign her hog check from the Hatfield Packing Co. in Pennsylvania. This was the best market for "high grade hogs" in the north east, and a considerable advantage monetarily. On 10/6/83, Mr. Humphrey made the following notation in his records

:10-6-83 farm visit the entire Acomb family was on hand.
Inspected and inventoried hogs this date.
Joyce has good set of records on this inventory.
feeders all ages from just born piglets to 220# on hand ----------2512
Sows and Gilts on hand ---------- -------- 288

> The price is poor right now @ $.43 base. Joyce is working at forward contracting soybean, thinks has enough corn on hand until PIK corn becomes available. Discussed financial situation with them including Bruce who sat in kitchen. **I was impressed by the thrifty trim well grown hogs being produced here. Released a hog check to purchase corn.**

The threat of liquidation and having to face a law suit in regard to CCC obligation created "mental and emotional distress", was an abusive governmental action, was discriminatory and was contractual interference. Mr. Humphrey also ignored the fact that the two agencies have a "memorandum of understanding" at the national level.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In 1983, the farm produced 3,637 animals that grossed $388,275. In 1984, the production was 3,266 and grossed $396,134. At this time, the Acomb family was looking to expand the operation by using a dairy barn owned by Charles B. Acomb's mother, Florence J. Carney. There was room for *36* to 40 additional farrowing stalls that would allow an increase of approximately 2,000 market hogs, and or sale-able feeder pigs. We would sell feeder pigs from the home farm also so as to allow more room for additional numbers.

Late in 1984, the Agricultural Stabilization and Conservation Department (ASCS), started a civil suit against Joyce L. Acomb to collect monies that Mr. Humphrey refused to allow her to pay. This meant additional mental and emotional distress as the family thought that any government body could liquidate them as Mr. Humphrey had threatened. Lawyers had to be hired etc.

In the early months of 1985, Joyce L Acomb was turned down in regard to an operating loan by Mr. Humphrey. On information and belief, Joyce started an appeal process following his decision. On information and belief, the appeal process took several months before it finally arrived on the desk of the administrator in charge at Syracuse, NY. On information and belief; there are to be no interruptions concerning the operation of the Joyce L. Acomb farm until the appeal process is complete. The rules are identified in the Code of Federal Regulations.

On or about June 2, 1995, Joyce L. Acomb received a letter dated May 31, 1985, from William E. Humphrey, Supervisor of the Livingston County FmHA. It is identified as follows:

> Dear Mrs. Acomb:
> This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.
> The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts.
>
> Sincerely.
> WILLIAM E. HUMPHREY
> County Supervisor

This letter was devastating in that we knew Mr. Humphrey had on many occasions abused his power, with-in the knowledge of his superiors and on information and belief was never disciplined by any superior at any time. His superiors did at one time move him down state for a period of time after hearing farmer complaints. On information and belief, after he was moved, Mr. Humphrey filed a lawsuit against the government.

Mr. Humphrey told Joyce L. Acomb on May 14, 1984, that she had to sign an agreement, Consent To Payment of Proceeds From Sale of Products. That meant that the hog checks were to be made out jointly to FmHA and Joyce L. Acomb by Hatfield

Packing Co. In other words, Mr. Humphrey was forcing Joyce L. Acomb to allow him to keep all of the proceeds. This meant that 2,327 hogs would be neglected. No money for labor, electricity, food for family etc. We will reiterate once more that **Mr. Humphrey was in violation of the Code of Federal Regulations. Failure to give proper notice which was a violation of due process, and last but not least, in violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota.**

The specific directives were as follows:

- 1. Page 33, 2(b). That the defendants,(FmHA), their agents, subordinates and employees are enjoined from proceeding to liquidate, or to terminate the living and operating allowances previously determined in the administration of any existing loan.

2. Page34 C. That the defendants, their agents, subordinates, and employees are enjoined from:
-accelerating the indebtedness of the plaintiff
-foreclosing on the real property or chattels of the plaintiffs
-demanding voluntary conveyance by the plaintiff
-repossessing chattels of the plaintiff or in any way proceeding against or depriving the plaintiffs of property in which the defendants have a security interest

This was in effect until 1987, and every FmHA official was privy to this information. At that time, we were under the impression that Mr. Humphrey was authoring this devastating letter on his own, but we were wrong. Some years later, I believe in 1994, we became aware of a notation by Mr. Humphrey in his handwriting and is as follows:

5-30-85 p/c C/F/P Paul Dendis

Discussed with him releasing hog checks as I have been doing, pending outcome of appeal, since I was under the impression that this was consistent with Coleman v Block. C/F/P advises that if I did not sign the f+h (Farm and Home Plan), then I did

not agree to release and should send Mrs. Acornb a letter telling her there will be no more releases. This advice concurs with **OGC** advice to C/F/P.

W.E.H.

(OGC is Office of General Counsel, lawyer Charles Volsing's advice to C/F/P Chief of Farm Programs, Paul Dendis.)

Joyce L. Acornb had to make a decision either to follow the directive of Supervisor William E. Humphrey and be driven out of business, or follow the directives of the Code of Federal Regulations, and or follow the directives of Federal Judge Van Sickle through a Court Order. She chose the later. She had no alternative but to seek out other markets that resulted in lower prices. From 6/5/85 to 9/13/86 the farm lost $17,371.27 because the Hatfield Packing Co. was not an available market.

In 1985 due to poor boar power and monies not available, the farm sold 2,231 hogs for $212,996. In 1986 there were 2,517 hogs sold for $284,057., and in 1987 there were 3,406 sold for $376,929. The devastating letter sent by William E. Humphrey, Livingston County Supervisor of the Farmers Home Administration was irrefutable proof that he, OGC lawyer Charles Volsing and CFP Paul Dendis, the FmHA Office in Syracuse and the Washington Office were all in contempt of a Federal Court Order as well as in contempt of the Rules of the C.F.R. This act expanded mental and emotional distress to all family members, and was another abusive governmental action. It was an act of violation of due process as well as an obvious act of malice and denial of equal protection of the laws.

It is a fact that every item found in the Livingston County FmHA Office file is copied and sent to a file in the State Office at Syracuse, NY, and another is sent to the Washington Office. Each office has the same records and knowledge in regard to any and all activities.

FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Sometime in October 1988, Joyce L. Acomb was served a summons in a criminal case. She had to appear in Rochester, NY in front of US Magistrate, Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

They did not ask Joyce to plead, which would have been not guilty. She was fingerprinted, photographed and put on $5,000. bond. The following day, on October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating":

DANSVIILLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL

> A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.
>
> Joyce Acomb of 83 17 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.
>
> Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October 1987.

Joyce L. Acomb was accused of selling $650,000 between June 1985 and October 1987. Her records show the figure was closer to $700,000.

According to NY State Labor figures, Joyce could have paid herself over $25,000 a year, but she always waived this opportunity. These accusations were all false,

and the mental and emotional distress continued. There was discrimination, conspiracy and other abusive governmental actions.

FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Joyce received a letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury".

On June 8, 1990, Charles B. Acomb took a complete set of records to Joyce's lawyer in Buffalo. Charles then went to Rochester, NY and delivered a duplicate copy to US Attorney Office for US Attorney Charles Pilato. On August 31, 1990, Joyce received a letter from Assistant US Attorney, Christopher Taffe as follows:

> Dear Ms. Acomb:
>
> Enclosed please find the letter dated August 24, 1990 regarding the above-captioned case. This letter indicates that you are no longer represented by Mr. LaTona. Please advise me no later than September 7, 1990 who is representing you. **If I do not hear from you by that date, this case will be presented a federal grand jury and <u>you will be indicted.</u>**
>
> Very truly yours,
>
> DENNIS C. VACCO
> United States Attorney
>
> By: CHRISTOPHER V. TAFFE
> Assistant United States Atty.

On information and belief, sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, NY. There was to be a pre-trial conference on September 17, 1990. Charles B. and Joyce L. Acomb arrived with Joyce lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's Courtroom and waited. Soon Assistant US Attorney Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyer, William Muoio came out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Acomb very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest.

The trial began on 09/18/90 and a decision was recorded on September 25, 1990, stated as follows:

> **IT IS ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint is dismissed.**

Joyce received a letter dated October 4, 1990 from her lawyer and he stated:

> Dear Joyce:
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Joyce Acomb was informed by her attorney William Muoio that the government was appealing her civil trial decision. This means more expense. Joyce had paid out $15,500 for two cases and still owes $7,101.74 plus interest. After many letter conferences and motions, **US Attorney Leslie K. Lagomarcina submitted a Voluntary Dismissal dated January 29, 1991. This was filed in the United States Court of Appeals, Second Circuit on January 29, 1991.**

On or about March 4, 1991, Charles B. and Joyce L. Acomb appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan: Dear Mr. Acomb: I sent your inquiry to the appropriate Executive agency and they have produced the enclosed response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator.

ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. **We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security.** Because this case is before the Court, we cannot comment on it at this time. We hope you find this information helpful in responding to your constituent. **Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home Administration, Washington, DC.**

The information given to a united States Senator was false and was perjury. All of the decisions by the governmental employees were causing extreme

emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb's face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca's Court on February 20, 1992, asking for a complete trial transcript of case #CIV-84-1389T, United States v Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that much. Laughed and said, **"You will be able to see what Judge Telesca says".** Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in 1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have $550 before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995.

The Acombs' have telephone records showing that they had tried to consummate an agreement with a member of Judge Telesca's Court in regard to preparing a complete record for Case No. CIV-84-1389T. In the year 1992, we made calls to a member of Judge Telesca's Court, and or, the Clerk's Office on 03/03/92, 03/04/92, 03/05/92 and 12/08/92. In the year 1993, we made calls on 02/24/93 @ 8:58 A.M., 02/24/93 @ 9:00 A.M., 03/02/93, 04/10/93, 04/12/93, 04/14/93 @ 9:09 A.M., 04/14/93 @ 10:20 A.M., 04/20/93, 04/23/93 @9:31 A.M., 04/23/93 @9:59 A.M., 04/26/93, 08/02/93, 08/11/93, 09/27/93, 09/28/93, 12/16/93 @ 8:55 A.M. and 12/16/93 @ 9:14 A.M. In the year 1994, we made calls on 05/04/94, 09/06/94, 09/08/94, 09/14/94, 09/20/94 and 12/23/94. In the year 1995, we made calls that were within Opta-Call, which is a grouping of numbers not identified. This is a money saving option through our telephone service. Consequently, we have no individual records during 1995.

On information and belief; Judge Telesca is responsible in regard to the conduct and work ethics of all of his Federal Court personnel.

On information and belief; Judge Michael A. Telesca has refused to allow any farmers in his district to present evidence in any, and all, individual cases.

We take the position that there has been fraud and conspiracy, malfeasance, nonfeasance, obstruction of justice, discrimination, and that their misconduct created severe emotional distress and a denial of due process.

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bivens Action" we

were supposed to be able to present evidence. This was a denial of due process and equal protection of the law.

EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

It is a fact that in 1983 there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was 3,637. That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the government agents that worked against her, her farm could have produced the following. In 1986, 36 farrowing stalls were added on the Florence J. Carney farm.

	YEAR	# OF STALLS	#BORN PER STALL	TOTAL
Actual	*1983*	*52*	*69.9*	*3,637*
Projected	*1987*	*88*	*69.9*	*6,151*
Projected	*1988*	*88*	*62.5*	*5,500*
Projected	*1989*	*88*	*65.0*	*5,720*
Projected	*1990*	*88*	*69.9*	*6,151*
Projected	*1991*	*88*	*62.5*	*5,500*
Projected	*1992*	*88*	*65.0*	*5,720*
Projected	*1993*	*88*	*69.0*	*6,072*
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			TOTAL ANIMALS	57,622

If there had been support when the FmHA agents knew the family worked very hard, produced top quality animals and sacrificed to expand the operation, these figures would be very realistic, possibly even better. Joyce L. Acomb could have paid her creditors, could have purchased her mother-in-law's life estate (Florence J. Carney) that sold at a very low price in approximately 1991.

NINTH AFFIRMATIVE DEFENSE

On 01-27-89, William E. Humphrey refused again to sign any papers that would allow Charles B. Acornb and Joyce L. Acomb any relief He also claimed we diverted large amounts of money to our own use, which was and is a false statement.

TENTH AFFIRMATIVE DEFENSE

While inspecting our case file in the US Attorney's Office in 1997, we discovered a document, a letter addressed to Mr. Humphrey by Moses Garippa, a government contractor. It is dated July 14, 1986. It seems that the Federal Government, through Mr. Humphrey, contracted Mr. Garippa to make an independent analysis of the Acomb Farm and it's potential. The last paragraph is as follows:

> **"This farm was successful and profitable in the past, and with proper management and timely decisions, surely can be successful again." Signed by Moses Garippa.**

This document was available to all of the FmHA agents, and they chose to ignore it. We did not have knowledge of this for years. Thus, this is fraudulent concealment, conspiracy etc.

ELEVENTH AFFIRMATIVE DEFENSE

We discovered a letter by Christopher V. Taffe, dated October 3, 1991, sent to a government investigator, in regard to charges of conversion. We read this for the first time in the US Attorney's Office in Rochester, NY, in 1997. **US Attorney Christopher V. Taffe, is telling the investigator that they have no case against Joyce L. Acomb. Both of these men knew that all of the hog checks and monies were put into the one and only farm checking account. Attorney Taffe states:**

> **"There *is* very little indication that the Acombs benefited financially from this conversion, other than allowing the business to continue."**

This charge was total discrimination, and their knowledge was concealed, was conspiracy and fraudulent concealment.

TWELVETH AFFIRMATIVE DEFENSE

On 11/21/88, there was a memo to Mr. Humphrey from Nancy Neu which reads:

> From Nancy Neu- as per Dave Spader's instructions, do not send Joyce Acomb the former letter, Ex A. etc.
>
> W.E.H. 1 *1123/88.*

It is our position that this is fraudulent concealment.

THIRTEENTH AFFIRMATIVE DEFENSE

Nancy Neu, Farmers Home Administration Program Division Director, is authoring a summary to the Independant Review Team in Washington, DC, dated at the top 2/19/97. She states:

> "The Acombs have indicated in letters prior to their pro-se lawsuit and in their pro-se lawsuit that their civil rights were violated, that there was fraud by the agency and that there was discrimination. These issues were all dismissed with the lawsuit and upheld by the Appeals Court. After a warning sanctions were imposed in favor of the government.

The fact is, that in that pro-se lawsuit the Acombs trusted Mr. Elliot in regard to any of the legal papers that were filed. We trusted that Mr. Elliot was correct in formulating the complaint etc. We found out later that Judge Larimer was correct in that the complaint asserted no individual fact and dates concerning various violations. In our current cross-claim, we have all of the dates and information necessary for a successful litigation.

Later in the summary, Nancy Neu is alluding to a criminal indictment against Joyce L. Acomb. This is a totally discriminatory statement and misleading to the Independant Review Team.

FOURTEENTH AFFIRMATIVE DEFENSE

Farmers Home Administration Supervisor, William E. Humphrey, failed to implement fully Code of Federal Regulation No. 1924.51, Management Assistance to Individual Borrowers and Applicants. This was and is discrimination.

AGAINST ALL DEFENDANTS MENTIONED HEREIN

Fraud, conspiracy, discrimination, abuse of prosecution, denial of equal protection of the law, denial of due process, contractual interference, fraud in contract, wire and mail fraud, deliberate indifference, perjury, denial of interstate commerce, malfeasance, nonfeasance, obstruction of justice, personal threats, neglect of duty and breach of trust. We will argue fraudulent concealment with specificity.

JURISDICTION

This Court has jurisdiction in this matter under 28 U.S.C. Sec. 1331, on the basis of federal questions raised as to violation of the rights of Joyce L. Acomb and Charles B. Acomb. Also, under 42 U.S.C. 1983, 1981, 1982, 1985 (2), (3), the Bivens doctrine, Bivens v Six Unknown Federal Agents, *403* U.S. 388, (1971) and 18 U.S.C.A.

1964 (c), 1962 (3), all violation of 4th Amendment, 5th, 6th, 8th and 14th Amendments.

JURY DEMAND

Plaintiffs in this counterclaim complaint, Joyce L. Acomb and Charles B. Acomb, demand a jury for the trial of all issues and claims set forth in these claims which are triable by jury.

WHEREFORE, the plaintiffs Joyce L. Acomb and Charles B. Acomb, in this counterclaim complaint pray for judgment against the defendants as follows:

Compensatory damages in the amount of dollars necessary to

1. Pay all of Joyce L. Acomb and Charles B. Acomb's creditors in full.

2. Order Farmers Home Administration to declare Joyce L. Acomb's farm free and clear of all debt.

3. Refurbish farm buildings and yards.

4. Replace 2,500 feeder pigs and 250 sows and boars.

5. Furnish farm with new line of equipment.

6. Purchase Galney Farm (Florence J. Carney Estate).

WHEREFORE, the plaintiffs pray for judgment in punitive damages to purchase 6,000 acres of land adjacent to Joyce L. Acomb's farm, and equipment to work it. Any further relief as the Court may deem just and proper.

DATED: December 29, 1997.

Respectfully submitted,

Joyce L. Acomb
Charles B. Acomb

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acornb and Joyce L. Acornb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

Charles B. Acomb
Joyce L. Acomb

Sworn to before me this
29th day of December, 1997.

NOTARY
DEBRA G. GOODELL, NOTARY PUBLIC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

INDEX NO.
97-C V-0022C
(SC)

JOYCE L. ACOMB,
CHARLES B. ACOMB,

AMENDED
AMENDED
ANSWER

Defendants.

AMENDED ANSWER

The defendants, Joyce L. Acornb and Charles B. Acornb, hereby answer the complaint, alleging:

FIRST AFFIRMATIVE DEFENSE

1. Admits paragraphs 1 through 10, 12 through 21, 23 through 26, 28 through 30, 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 11, 22, 27, 31, *33, 35, 36, 38* and 49 A, B, C, D, E and F.

SECOND AFFIRMATIVE DEFENSE

3. The complaint fails to state a claim against the defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

4. The claims set forth herein are barred by applicable statutes of limitation.

5. The alleged right of action set forth in the complaint did not accrue within six years before the commencement of this action.

FOURTH AFFIRMATIVE DEFENSE

6. Upon information and belief; the plaintiff has not complied with applicable law, rules and standard operating procedures with respect to the loans in question and has not granted to the debtors forbearance, modifications and restructuring to which they are entitled pursuant to applicable law, regulations and standard operating procedures of the Farmers Home Administration. As such, plaintiff has denied the defendants the equal protection and treatment to which they are entitled under applicable law.

FIFTH AFFIRMATIVE DEFENSE

7. Plaintiff has not complied with it's obligations under the New York Uniform Commercial Code with respect to its duty to act in good faith and deal fairly in the enforcement and exercise of its rights under the promissory notes in question.

WHEREFORE, the defendants respectfully request judgment dismissing the complaint herein with prejudice and direct the Farmers Home Administration to discharge of record all mortgages referred to in the complaint herein.

DATED: Dansville, New York
January 27, 1998

Joyce L. Acomb

Charles B. Acomb

UNITED STATES DISTRICT CQURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Plaintiffs,

INDEX NO.
97-C V-0022C(Sc)

vs

AMENDED, AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA);
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING; PIERRE LABOURDETTE;
CHRISTOPHER TAFFE; JUDGE DAVID G.
LARIMER; JUDGE MICHAEL A. TELESCA;
NANCY NEU and John Does and Mary Roes,

Defendants.

Plaintiffs come forward with Cross-Claim and Affirmative Defense praying for damages against those above named defendants.

PARTIES

1. Plaintiffs Joyce L. Acomb and Charles B. Acomb, are United states citizens, with an address of 8317 State Rte. 63 N., Dansville, New York 14437.

2. Defendant Farmers Home Administration is a creation of the United States government mandated to follow statute law as prescribed in complaint whose address is 129 Main Street, Leicester, New York 14481.

3. Defendant William E. Humphrey, is sued individually and is a United States citizen, with an address of: 129 Main Street, Leicester, New York 14481.

4. Defendant Paul Dendis is sued individually and is a citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202.

5. Defendant Charles Volsing is sued individually and is citizen of the United States with an address at: 441 South Seline Street, Syracuse, New York 13202.

6. Defendant Pierre LaBourdette is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

7. Defendant Christopher V. Taffe *is* sued individually and *is* a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

8. Judge David G. Larimer is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614.

9. Judge Michael A. Telesca is sued individually and is a citizen of the United States with an address at: Federal Building, State Street, Rochester, New York 14614

10. Defendant Nancy Neu is sued individually and is a citizen of the United States with an address at: 441 South Selina Street, Syracuse, New York 13202.

I. PRELIMINARY STATEMENT

11. In 1978, the Acomb family farm received a loan from FmHA to improve and expand their building program that was designed to maintain a hog enterprise, "farrow to finish". This program would take sometime to reach their immediate goal of selling three thousand finished hogs per year. The first year, 1978, there were 689 head sold for $80,231. In 1979, the numbers increased to 905 head for $90,112. In 1980, due to the shortage of money and increased number of animals sold, the Acomb's oldest daughter, Lori, came home to work on the farm. She had graduated from the Chamberlain School of Retailing, and was just promoted to Assistant Manager by the Ames Department Store at Arcade, NY. While receiving over $300 per week at that employment, she was paid by her mother, Joyce, $50 per week plus board for farm work. Their son Brent, who had started a career in the US Air Force, I think in 1978, came

home in 1980 on an early discharge and worked for $50 per week and board. Their youngest daughter Renee, sometime later quit college and came home to work for the same pay. In 1980 the farm produced 1,569 market hogs for $148,139. In 1981 the production was 1,968 animals for $187,S42. The number increased again in 1982 to 2,887 animals sold for $284,711. Joyce L. Acomb, the owner and working manager of their farm, was the winner of the 1982 New York State corn growing championship that was conducted by the National Corn Growers Association. This was in the non-irrigated, Class A section of the contest. The yield was 172.22 bushels per acre, or 4.82 tons per acre.

FIRST AFFIRMATIVE DEFENSE AND COUNTERCLAIM

12. In 1980 and 1981, in addition to the FmHA loans, Joyce L. Acomb received Farm Storage loans from the Commodity Credit Corporation (CCC). The 1980 loan was being paid off through monthly payments that was agreed on between the two parties. In 1981, the-same procedure was followed. Mr. William E. Humphrey, the FmHA Livingston County Supervisor in 1981, would not allow the 1981 CCC note to be paid. Mr. Humphrey also told Joyce L. Acomb, that if she did complete the CCC payments, he would liquidate her. Mr. Hauryski, the CCC supervisor, was informed of Mr. Humphrey's threat, and he told Joyce Acomb he would have to sue her. Joyce Acomb reported this conversation back to Mr. Humphrey who said, "So what, let him sue". **Years later we found out that an FrnHA official, Mr. Paul Dendis, had suggested that FmHA pay CCC a pro-rated share of payments from the sale of hogs.** We also found out years later that there was a Memorandum of Understanding between the two agencies. Mr. Humphrey's threat, "I will liquidate you", was a threat of a non-judicial foreclosure, which would be illegal. All of the FmHA officials knew of the Memorandum of Understanding. This constituted a breach of Fiduciary Duty. The Agency did not share

their knowledge with the farmers that there was a "Memorandum of Understanding". This was fraudulent concealment.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

13. On December 3, 1984, the Agricultural Stabilization and Conservation Service (ASCS) started a civil suit against Joyce L. Acomb to collect monies that Mr. Humphrey refused to allow her to pay. This could have been avoided but for the breach of fiduciary duty by the FmHA officials in Syracuse, NY and Harrisburg, PA. This civil suit automatically shut the door in regard to Joyce Acomb participating in any CCC programs until the suit would be settled. On December 3, 1984, the government officials should have instead admitted that there was a Memorandum of Understanding. They did not. This constitutes again fraudulent concealment.

THIRD AFF1RMATIVE DEFENSE AND COUNTERCLAIM

14. In the early months of 1985, Joyce L. Acomb was turned down in regard to an operating loan by Mr. Humphrey, the Livingston County Supervisor. She began the appeal immediately. On June 2, 1985, Joyce received a letter dated May 31, 1985 from William E. Humphrey stating:

> "This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.
>
> The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts."

Mr. Humphrey was in violation of rules in the Code of Federal Regulations. Failure to give proper notice, which was a violation of due process, and but not least, a violation of a Federal Court Order signed on February 17, 1984 by Federal Judge Bruce M. VanSickle in Bismarck, North Dakota. On the last page of this court Order, Judge VanSickle states:

> It is further ordered that defendants John R. Block and Charles Shuman shall give notice to their agents, subordinates, and employees who are charged with implementing FmHA loans, of the contents of this order.

Sometime in 1994, we became aware of a memo by William E. Humphrey, that he had discussed this letter with Office of General Counsel (O.G.C.), Charles Volsing and Chief of Farm Programs (C.F.P.) Paul Dendis. They approved of this letter even though they discussed the Coleman Decision. All three officials agreed to be contemptuous of the Court Order. The FmHA officials were aware of the Federal Court Order, and they refused to share this knowledge with Joyce L. Acomb. This is fraudulent concealment. At least three FmHA officials agreed to violate a Court Order. This is fraud and conspiracy. On information and belief, no other FmHA borrower received a letter demanding all of the proceeds. This is blatant discrimination because Joyce L. Acomb is a woman. It is also a violation of Equal Protection of the Laws.

FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

15. Sometime in October 1988, Joyce L. Acomb was served a summons in a criminal case. She had to appear in Rochester, NY in front of US Magistrate, Honorable Kenneth Fisher, to answer a complaint. Brief description of offense:

> Unlawfully disposing of property previously pledged to the Farmers Home Administration.

The following day, October 29, 1988, an article appeared in the Rochester Democrat and Chronicle stating:

DANSVILLE WOMAN CHARGED WITH SELLING LOAN COLLATERAL

> A Dansville woman appeared before a Federal Magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the US Farmers Home Administration.
>
> Joyce Acomb of 83 17 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by US Magistrate Kenneth Fisher. She was released on $5,000 bond.
>
> Assistant US Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October 1987.

This charge came about because William E. Humphrey complained to his superiors that Joyce L. Acomb insisted on continuing doing business by selling animals and refusing to give him all the money that he demanded in his letter to her of May 3 1, 1985. This serious charge came about only because the government officials were involved in fraud and conspiracy, fraudulent concealment, discrimination etc.

FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

16. Joyce received a threatening letter from her lawyer on or about June 2, 1990, dated May 30, 1990. It states, "I have been told that unless an agreement is reached on or before June 15, 1990, that you will be indicted by the Federal Grand Jury".

On August 31, 1990, Joyce received another threatening letter from Assistant US Attorney, Christopher Taffe. These threatening letters arrived at Joyce L. Acomb's house only because of previous discrimination, fraud and conspiracy, fraudulent concealment, breach of fiduciary duty etc.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

17. On information and belief, sometime in September, 1990, we were alerted that there would be a civil trial in Judge Telesca's Court, Rochester, NY. there was to be a pre-trial conference on September, 17, 1990. Charles B. and Joyce L. Acomb arrived with Joyce's lawyer, William A. Muoio. William went into Judge Telesca's chambers. Charles and Joyce sat outside of Judge Telesca's courtroom and waited. Soon Assistant US Attorney, Christopher Taffe and lawyer John Sperenzo appeared and turned left down a corridor towards Judge Telesca's chambers. Sometime later Joyce's lawyers William Muoio, came out and sat down between us and said, "Attorney Taffe wants Joyce to plead guilty to a felony in regard to the criminal charge in Magistrate Fisher's Court, and cancel the civil trial and any monetary penalties associated with either case. Joyce immediately began crying and it was of course a very emotional event. Charles Acomb very soon told lawyer Muoio that Joyce was not going to plead guilty to any activity

whatsoever. Not only was she innocent of these charges, but that in her whole life she had never mentioned anything dishonest. The trial began on 9/18/90 and a decision was recorded on September 25, 1990, stated as follows:

> IT IS ORDERED AND ADJUDGED that because of plaintiff FmHA's refusal to allow the defendant Acomb to repay under CCC contract, her obligation is discharged and the complaint is dismissed.

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

18. Joyce received a letter dated October 4, 1990, from her lawyer and he stated:

> Dear Joyce:
> Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you.
>
> Mr. Taffe of the United States Attorneys Office stated that they will indict you within the next two months.

Again we have another threatening letter that is completely discriminatory. We are told that we have to pay an attorney to fight the government appeal of Judge Telesca's decision. Then the government submits a Voluntary Dismissal, on file in the US Court of Appeals.

EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

19. On or about March 4, 1991, Charles B. and Joyce L. Acomb, appealed to Senator Daniel P. Moynihan and Senator D'Amato for help in regard to the discriminatory practices of government employees. We got an answer from each senator. The following is from Senator Daniel P. Moynihan: Dear Mr. Acomb: I sent your inquiry to the appropriate Executive Agency and they have produced the enclosed

response. I am sorry it could not be more favorable. If there is any other way I can be of assistance, please contact me. Signed Daniel P. Moynihan, United States Senator. ENCLOSED RESPONSE: Dear Senator Moynihan: Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration. We understand that Mrs. Acomb is currently under indictment in Federal District Court for the conversion of security. Because this case is before the Court, we cannot comment on it at this time. We hope you find this information helpful in responding to your constituent. Sincerely, LA VERNE AUSMAN, Administrator, Farmers Home Administration, Washington, DC. The information given to a United States Senator was false, and was perjury. All of the decisions by the governmental employees were causing extreme emotional distress and discrimination. There is conspiracy, perjury, denial of due process, malice and fraud.

NINTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

20. In early 1992, we decided to try and do something that would help us against the government. We wanted the trial and pre-trial transcript from Judge Telesca's Court. The fact that U S Attorney Taffe could throw a fabricated criminal complaint in Joyce L. Acomb s face preceding a civil trial did not sound at all correct.

We sent a letter to an employee of Judge Telesca s Court on February 20, 1992, asking for a complete trial transcript of case CIV-84-1389T, United States v. Joyce L. Acomb. We asked for the direct and cross examination of William E. Humphrey first. We enclosed $100 to start, and stated that if more money was needed, to send request in enclosed self-addressed stamped envelope. We did not hear from him. Sometime later Charles B. Acomb went to the Federal Court House to talk to him. He said he got the letter and check. Said he would do the whole thing and not charge us that

much. Laughed and said, "You will be able to see what Judge Telesca says". Stated further that once a transcript is made a copy of it has to be available in the Court House. We waited and did not hear from anybody associated with Judge Telesca's Court. We made phone calls etc., did not receive transcript in 1992, did not receive transcript in 1993, did not receive transcript in 1994, did not receive transcript in 1995. Sometime in July 1995, we called this representative again, and he at this time said he would have to have $550 before he would do it. We sent the fellow a check for $550, but still did not receive it in the year 1995.

The Acombs'' have telephone records showing that they had tried to consummate an agreement with a member of Judge Telesca's Court in regard to preparing a complete record for Case No. CIV-84-1389T. In the year 1992, we made calls to a member of Judge Telesca's Court, and or, the Clerk's Office on 03/03/92, 03/04/92, 03/05/92 and 12/08/92. In the year 1993, we made calls on 02/24/93 @ 8:58 A.M., 02/24/93 @ 9:00 A.M., *03/02/93,* 04/10/93, 04/12/93, 04/14/93 @ 9:09 A.M., 04/14/93 @ 10:20 A.M., 04/20/93, 04/23/93 @ *9:31* A.M., 04/23/93 @ 9:59 A.M., 04/26/93, 08/02/93, 08/11/93, 09/27/93, *09/28/93,* 12/16/93 @ 8:55 A.M. and 12/16/93 @ 9:14 A.M. In the year 1994, we made calls on 05/04/94, 09/06/94, 09/08/94, 09/14/94, 09/20/94 and 12/23/94. In the year 1995, we made calls that were within Opta-Call, which is a grouping of numbers not identified. This is a money saving option through our telephone service. Consequently, we have no individual records during 1995.

On information and belief, Judge Telesca is responsible in regard to the conduct and work ethics of all of his Federal Court personnel.

On information and belief, Judge Michael A. Telesca has refused to allow any farmers in his district to present evidence in any, and all, individual cases.

We take the position that there has been fraud and conspiracy, malfeasance, nonfeasance, obstruction of justice, discrimination, and that their misconduct created severe emotional distress and a denial of due process. This is also fraudulent concealment.

TENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

21. Also, sometime in 1992 we contacted a fellow who would help us in a civil suit. He told us things we had never heard of before. He mentioned a "Bivens Action" we were supposed to be able to present evidence. This was a denial of due process and equal protection of the law.

ELEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

22. It is a fact that in 1983 there were 52 farrowing stalls (where the sows give birth to the baby pigs). The number of pigs marketed was 3,637. That showed that each farrowing stall produced 69.9 pigs for the year. If she had support from all of the government agents that worked against her, her farm could have produced the following. In 1986, 36 farrowing stalls were added on the Florence J. Carney farm.

	YEAR	*# OFSTALLS*	*# BORN PER STALL*	*TOTAL*
Actual	*1983*	*52*	*69.9*	*3,637*
Projected	*1987*	*88*	*69.9*	*6,151*
Projected	*1988*	*88*	*62.5*	*5,500*
Projected	*1989*	*88*	*65.0*	*5,720*
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Projected 1996	*88*	*64.0*	*5,632*

TOTAL ANIMALS *57,622*

If there had been support when the FmHA agents knew the family worked very hard, produced top quality animals and sacrificed to expand the operation, these figures would be very realistic, possibly even better. Joyce L. Acomb could have paid her creditors, could have purchased her mother-in-law's life estate (Florence J. Carney) that sold at a very low price in approximately 1991.

TWELVETH AFFIRMATIVE DEFENSE

23. On 01-27-89, William E. Humphrey refused again to sign any papers that would allow Charles B. Acomb and Joyce L. Acomb any relief He also claimed we diverted large amounts of money to our own use, which was and is a false statement.

THIRTEENTH AFFIRMATIVE DEFENSE

24. While inspecting our case file in the US Attorney's Office in 1997, we discovered a document, a letter addressed to Mr. Humphrey by Moses Garippa, a government contractor. It is dated July 14, 1986. It seems that the Federal Government,

through Mr. Humphrey, contracted Mr. Garippa to make an independent analysis of the Acomb Farm and it's potential. The last paragraph is as follows:

> **"This farm was successful and profitable in the past, and with proper management and timely decisions, surely can be successful again." Signed by Moses Garippa.**

This document was available to all of the FmHA agents, and they chose to ignore it. We did not have knowledge of this for years. Thus, this is fraudulent concealment, conspiracy etc.

FOURTEENTH AFFIRMATIVE DEFENSE

25. We discovered a letter by Christopher V. Taffe, dated October 3, 1991, sent to a government investigator, in regard to charges of conversion. We read this for the first time in the US Attorney's Office in Rochester, NY in 1997. US Attorney Christopher V. Taffe, is telling the investigator that they have no case against Joyce L. Acomb. Both of these men knew that all of the hog checks and monies were put into the one and only farm checking account. Attorney Taffe states:

> **"There is very little indication that the Acombs benefited financially from this conversion, other than allowing the business to continue."**

This charge was total discrimination, and their knowledge that was concealed, was conspiracy and fraudulent concealment.

FIFTEENTH AFFIRMATIVE DEFENSE

26. On 11/21/88, there was a memo to Mr. Humphrey from Nancy Neu which reads:

> From Nancy Neu- as per Dave Spader's instructions, do not send Joyce Acomb the former letter, Ex A. etc.
>
> W.E.H. 11/23/88.

It is our position that this is fraudulent concealment.

SIXTEENTH AFFIRMATIVE DEFENSE

27. Nancy Neu, Farmers Home Administration Program Division Director, is authoring a summary to the Independent Review Team in Washington, DC, dated at the top 2119/97. She states:

> "The Acombs have indicated in letters prior to their pro-se lawsuit and in their pro-se lawsuit that their civil rights were violated, that there was fraud by the agency and that there was discrimination. These issues were all dismissed with the lawsuit and upheld by the Appeals Court. After a warning sanctions were imposed in favor of the government.

The fact is, that in that pro-se lawsuit the Acombs trusted Mr. Elliot in regard to any of the legal papers that were filed. We trusted that Mr. Elliot was correct in formulating the complaint etc. We found out later that Judge Larimer was correct in that the complaint asserted no individual fact and dates concerning various violations. In our

current cross-claim, we have all of the dates and information necessary for a successful litigation.

Later in the summary, Nancy Neu is alluding to a criminal indictment against Joyce L. Acomb. This is a totally discriminatory statement and misleading to the Independent Review Team.

SEVENTEENTH AFFIRMATIVE DEFENSE

28. William E. Humphrey and other agents, failed on many occasions to implement, or to point out to the Acombs numerous Code of Federal Regulations that would have given them a deferral. They are as follows: CFR Rule 1924.51, 1924.55, 1924.56, 1924.57 (b)(1), 1941.3, 1951.313 (A) (2), 1951.40 (b) (2), 1951.33 (a) (2). 1951.33 (a) (3), 1951.40 (a) (1), and 7 USC 1981A. This was fraudulent concealment, discrimination, breach of fiduciary duty etc.

EIGHTEENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

29. Joyce L. Acomb had requested to review her file by letter to Andrew T. Muscarella, County Supervisor, on March 15, 1991. He answered on March 20, 1991 and stated that it had been forwarded to the Freedom of Information Officer in our State Office, Syracuse, NY. He then stated I would have to pay copy costs which could be $200 - $300. We received an answer from State Director, Pierre L. LaBourdette, dated June 26, 1991. He states, "We have reviewed your request and have determined this material should not be released to you at this time. This decision is based on 5 U.S.C. 552a (D) (5).

We then replied by letter dated July 8, 1991, notifying the director that we were appealing the state decision. We received a letter from Joanne Shaw, Assistant Freedom of Information Officer, dated August 9, 1991. She states they have to evaluate reasons we were turned down by state office.

It is our position that any denial at all is discrimination and fraudulent concealment. Sometime later they allowed us to review part of the file. They charged us for each copy even though the charge is a violation of FmHA Instruction 2015.-E.

NINTEENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

30. On information and belief, the C.F.R. Regulation, or directions as to how to file a Torte Claims Act, was removed from the C.F.R. in 1984. FmHA stated that the intended effect was simply to remove an unneeded regulation from the C.F.R. This was, and is, fraudulent concealment.

AGAINST ALL DEFENDANTS MENTIONED HEREIN

31. Fraud, conspiracy, discrimination, abuse of prosecution, denial of equal protection of the law, denial of due process, contractual interference, fraud in contract, wire and mail fraud, deliberate indifference, perjury, denial of interstate commerce, malfeasance, nonfeasance, obstruction ofjustice, personal threats, neglect of duty, breach of trust, false arrest and fraudulent concealment with specificity.

JURISDICTION

32. This Court has jurisdiction in this matter under 28 U.S.C. Sec. 1331, on the basis of federal questions raised as to violation of the rights of Joyce L. Acornb and Charles B. Acornb. Also, under 42 U.S.C. 1983, 1981, 1982, 1985 (2), (3), the Bivens doctrine, Bivens v Six Unknown Federal Agents, 403 U.S. 388, (1971) and 18 U.S.C.A. 1964 (c), 1962 (3), all violation of 4th Amendment 5th, 6th, 8th and 1.4th Amendments.

JURY DEMAND

33. Plaintiffs in this counterclaim complaint, Joyce L. Acomb and Charles B. Acomb, demand a jury for the trial of all issues and claims set forth in these claims which are triable by jury.

FIRST CAUSE OF ACTION

34. Plaintiffs repeat and realleges Paragraphs 1 through 33 as if set forth more fully herein.

35. By the acts described above, the defendants wrongfully and illegally refused to comply with any and all deferral regulations including 7 U.S.C. 1981 A. and Memorandum of Understanding. By the acts above, they violated their Fiduciary Duty.

SECOND CAUSE OF ACTION

36. Plaintiffs repeat and reallege Paragraphs 1 through 35 as if set forth more fully herein.

37. The government failed to follow the dictates of their own contractor who favored supporting the Acomb Farm enterprise.

38. By the acts described above, the Acombs lost their best market for selling farm animals.

39. By the acts above, they could not properly take advantage of planting Galney Farm's 239 acres or Joyce L. Acomb's 190 acres.

40. By the acts above, Joyce L. Acomb was falsely arrested.

41. By the acts above, Joyce L. Acomb received many heart wrenching, threatening letters from government agents.

42. By the acts described above, the Independent Review Team in Washington, DC was misinformed as to a number of facts.

43. By the acts above, the Acombs were denied a pretrial and trial transcript of trial within a reasonable time.

THIRD CAUSE OF ACTION

44. Plaintiffs repeat and reallege Paragraphs 1 through 43 as if set forth more fully herein.

45. By the acts described above, the government agents instilled fear in both Joyce L. Acomb and Charles B. Acomb in regard to making 44 farm oriented decisions.

46. By the acts described above, the Acombs had a fear of entering into any and all agreements with the Federal Government and or it's employees after May 31,1985.

47. By the acts described above, the Acombs could not plant continuous corn as they had up to and through 1985.

FOURTH CAUSE OF ACTION

48. Plaintiffs repeat and reallege Paragraphs I through 47 as if set forth more fully herein.

49. Upon the acts described above, plaintiffs request that the Court award the plaintiffs reasonable attorney's fees and costs.

WHEREFORE, the Plaintiffs demand Judgment against the Defendants as follows:

1. On the first, second and third causes of action, compensatory damages against all defendants in the amount of 2 million dollars ($2,000,000.) with interest thereon as provided by law.

2. On the first, second and third causes of action, exemplary, and or, punitive damages in the amount of 18 million dollars ($18,000,000.).

3. On the fourth cause of action, reasonable attorney's fees for the costs and disbursements of this action, together with such other relief as the Court deems just and proper.

DATED: Dansville, New York
January27, 1998

Respectfully submitted,

Joyce L. Acomb
Charles B. Acomb

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe, Esq.
Assistant US Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 27th day of January, 1998.

Charles B. Acomb

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs

INDEX NO.
97CV-0022C(SC)

MOTION FOR AMENDMENT

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Defendants.

ANSWER

The defendants, Joyce L Acomb and Charles B. Acomb, hereby answer the complaint, alleging:

I. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36, 38, 49 A, B, C, D, E, F.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiffs,

vs

INDEX NO.
97-CV-0022C(Sc)

MOTION FOR AMENDMENT OF AMENDED AFFIRMATIVE DEFENSE AND COUNTERCLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA);
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING; PIERRE LABOURDETTE;
CHRISTOPHER TAFFE; JUDGE DAVID G.
LARIMER; .JUDGE MICHAEL A. TELESCA;
and John Does and Mary Roes,

Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Affirmative Defense and Counterclaim for the following reasons:

1. The defendants status as non-learned, non-lawyer litigants, are at a severe disadvantage in organizing and implementing all of the necessary information in a normal time frame.

2. Defendants would be stifled in exercise of their right to access this Court if relief is not granted.

3. As the Court well knows, when even a competent lawyer is Shepardizing different cases he or she finds new revelations.

4. Example: We should have known that each defendant should have been served individually, but we either forgot or didn't know. I, Charles B. Acomb, did realize this after we filed the Amended papers, but it was then too late.

5. We knew that a number of C.F.R. Rules had been ignored by the government agents, but did not have time or realize they should have been implemented in the counterclaim.

6. We did realize that to give ourselves the best defense, we would have to have access to the complete file kept by the Livingston County FmHA Office.

7. We have had time to review the complete file and have made new discoveries. It seems that government agents knew full well that they could not indict Joyce L. Acomb for conversion at any time. They asked Joyce L. Acomb to plead guilty to a felony prior to a civil trial in Judge Telesca's Court. We wish to add this information to our Amended Answer and Affirmative Defense and Cross Claim.

8. While looking through other cases filed in Rochester Federal Court, we noticed something nobody else mentioned, time limitation. We wish to argue as a defense the following:

A. The claims set forth herein are barred by applicable statutes of limitation.

B. The alleged right of action set forth in the Complaint did not accrue within six years before the commencement of this action.

9 We ask the Honorable Court to allow us to name specific people in our Amended Answer and Cross-Claim, because in regard to fraudulent concealment, one must argue with specificity. The Appellate Courts demand names, specific time, place etc.

10. We have not sent the file to a person in Arizona yet because of money problems.

11. We were able to get copies of papers given to the Independant Review Team, by the Syracuse, NY office. An employee of FmHA is telling the Independant Review Team that Joyce L. Acomb had been indicted. This is a violation of her Civil Rights, and we wish to add this abuse to our Amended Answer.

12. It is our prayer that the Honorable Court will allow us to make these changes in the interest of justice.

13. Please find as EXHIBIT A, copy of Court Order signed by the Honorable Judge John T. Curtin, on Novermber 24, 1997.

14. We pray that the Honorable Court take into consideration the United States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While (Gillispe v Civilett, 629 F2 637 (1980), and Haines v Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion we again pray that the Court still grant us relief

DATED: December 8, 1997
Dansville, NY

Charles B. Acomb

Joyce L. Acomb

STATE OF NEW YORK
COUNTY OF L1VINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. *63* N.
Dansville, NY 14437
Tel: (7 16) *335-6804*

Sworn to before me this
8th day of December, 1997

NOTARY

DEBRA G. GOODELL, NOTARY PUBLIC
State of N.Y., County of Livingston
My Comm. Expires June 30, 1998

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe, Esq.
Assistant US Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 8th day of December 1997.

Charles B. Acomb

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

INDEX NO.
97-CV-0022C(Sc)

vs

MOTION FOR AMENDMENT

JOYCE L. ACOMB,
CHARLES B. ACOMB,
Defendants.

ANSWER

The defendants, Joyce L .Acomb and Charles B Acornb, hereby answer the complaint, alleging:

1. Admits paragraphs 1 through 32, 34, 37 and 39 through 48.

2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 33, 35, 36. 38, & 49 A, B, C, D, E, F.

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof, the same is true to the knowledge of the plaintiff's except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

CHARLES B. ACOMB
JOYCEL ACOMB

8317 State Rte *63* N.
Dansville, NY 14437
Tel: (716) 335-6804

Sworn to before me this
11th day of December, 1997

NOTARY

DEBRA G. GOODELL NOTARY PUBLIC
State of N.Y., County of Livingston
My Comm. Expires June 30, 1998

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOYCE L. ACOMB,
CHARLES B. ACOMB,

Plaintiffs,

INDEX NO.
97-C V-0022C(Sc)

vs

MOTION FOR AMENDMENT OF AMENDED AFFIRMATIVE DEFENSE AND CROSS-CLAIM

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION(FmHA)
WILLIAM E. HUMPHREY; PAUL DENDIS;
CHARLES VOLSING; PIERRE LABOURDETTE;
CHRISTOPHER TAFFE; JUDGE DAVD G.
LARIMER; JUDGE MICHAEL A. TELESCA;
and John Does and Mary Roes,

Defendants.

The defendants, Joyce L. Acomb and Charles B. Acomb, hereby moves this Honorable Court for an Order authorizing defendants to amend the Amended Answer, Affirmative Defense and Cross-Claim, for the following reasons:

1. On November 24, 1997, the Honorable Judge John T. Curtin, gave us leave to renew this motion after Settlement Proceedings have been concluded. See EXHIBIT A.

2. We did send this motion through the US Mail on Monday, 12/08/97. We then got a call from Jane, a District Court employee, stating that we should have a signature after the first page, and or, the Motion for Amendment of the Answer. We have chosen to revise that particular paper.

3. We have had time to review the complete file and have made new discoveries. US Assistant District Attorneys had compelled Joyce L. Acomb to appear in front of Magistrate Fisher in Rochester, NY, then fingerprinted her, took her picture and charged her with conversion without an indictment. In the file is a letter wherein the US Attorney states that they could not even successfully prosecute Joyce or get an indictment. We

want to add this information to the Amended Answer, Amended Affirmative Defense and Cross-Claim. See EXHIBIT B.

4. While checking another Foreclosure Case in Rochester District Court, we discovered information in their Answer that we should use in our Amended Answer. In Case No. 97-C V-6272T, as a defense they state:

A. The claims set forth herein are barred by applicable statutes of limitation.

B. The alleged right of action set forth in the complaint did not accrue within six years before the commencement of this action. See NY State law attached. EXHIBIT C.

5. We were able to get copies of papers given to the Independant Review Team by the Syracuse, NY office. An employee of FmHA is telling the Independant Review Team, that Joyce L. Acomb has been indicted and that "All discrimination issues were resolved in legal decisions". This is a false statement. See EXHIBIT D. This is a violation of her civil rights, and we wish to add this abuse to our Amended Answer

7. To support our statement that there was severe civil rights violations, please review EXHIBIT E.

8. The defendants status as non-learned, non-lawyer litigants, are at a severe disadvantage in organizing and implementing all of the necessary information in a normal time frame.

9. Defendants would be stifled in exercise of their right to access this Court if relief is not granted.

10. As the Court well knows, when even a competent lawyer is shepardizing different cases, he or she finds new revelations.

11. Example: We should have known that each defendant should have been served individually, but we either forgot or didn't know. I, Charles B. Acomb, did realize this after we filed the amended papers, but it was then too late.

12. We knew that a number of CFR. Rules had been ignored by the government agents, but did not have time or realize they should have been implemented in the Cross-Claim.

13. We did realize that to give ourselves the best defense, we would have to have access to the complete file kept by the Livingston County FmHA Office.

14. It is our prayer that the Honorable Court will allow us to make these changes in the interest of justice.

15. We pray that the Honorable Court take into consideration the United States Supreme Court's contention, that non-lawyer litigants are to be held to less stringent standards than lawyers. While Gillspie v Civilette, 629 F2 *637* (1980), and Haines v Kerner, 92 S.Ct. 594 (1972), don't mention specifically this particular worded motion, we again pray that the Court still grant us relief.

DATED: December 11, 1997.
Dansville, NY

Charles B. Acomb

Joyce L. Acomb

STATE OF NEW YORK
COUNTY OF LIVINGSTON

We, Charles B. Acomb and Joyce L. Acomb, being duly sworn, depose and say:

We are the plaintiffs above named, and make this claim on behalf of ourselves; We have read the foregoing claim and know the contents thereof, the same is true to the knowledge of the plaintiffs except for the matters herein alleged upon information and belief, and as to those matters, we believe them to be true.

CHARLES B. ACOMB

JOYCE L. ACOMB
8317 State Rte. *63* N.
Dansville, NY *14437*
Tel: (7 16) 335-6804

Sworn to before me this
11th day of December, 1997

NOTARY

DEBRA G. GOODELL, NOTARY PUBLIC
State of NY, County of Livingston
My Comm. Expires June 30, 1998

CERTIFICATE OF MAILING

I, Charles B. Acomb, did place a copy of this motion in the United States Postal Service, first class postage prepaid to:

Jane B. Wolfe, Esq.
Assistant US Attorney
Western District of New York
138 Delaware Avenue
Buffalo, NY 14202

on this 11 day of December, 1997

Charles B. Acomb

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

97-C V-0022C(Sc)

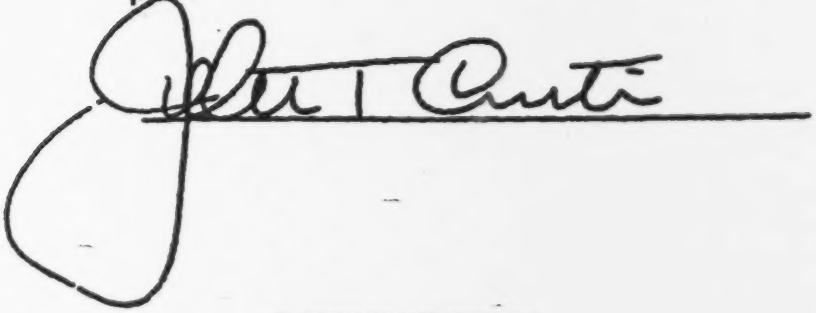
JOYCE L. ACOMB and
CHARLES BRUCE ACOMB

Defendants.

Pending is defendants' motion to amend the answer (Item 32). The motion is denied, with leave to renew after settlement proceedings have been concluded.

So ordered.

proc



JOHN T. CURTIN
United States District Judge

Dated: November 24, 1997

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
129 Main Street
Leicester, New York 14481

Mrs. Joyce L. Acomb
RFD #1
Dansville, New York 14437

November 15, 1984

Since this agency made you a loan for the purpose of maintaining your farm operation, we are very interested in the progress you are making. As you know, all of our loans are made with the understanding that they will, be repaid in a timely manner. We would appreciate it if you would send us information about your plan of repayment for this year. You can do this by checking the appropriate box at the bottom of this letter and returning it to us in the enclosed envelope, which does not require a stamp.

The amount due Farmers Home Administration by 1/1/85, according to your promissory note (s) is $ 287,439.17. Of this amount, $ 209,801.97 represents a delinquency from your last due date.

Please check the appropriate box, sign return this letter within ten (10) days.

__ Payment in full enclosed.

__ Payment in full will be made by 12/15/

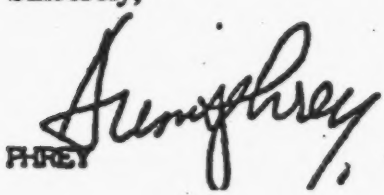
__ Partial payment is enclosed and the balance will be paid by 12/15/

_X_ I will be unable to make full payment and would like to schedule an appointment immediately to discuss this problem..

Joyce L. Acomb
Borrower's Signature

Your cooperation in this matter is greatly appreciated. If you have any questions or need any further information, please call.

Sincerely,



PHREY

WILLIAM E. HUMPHREY
County Supervisor

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

CONSENT TO PAYMENT OF PROCEEDS FROM SALE OF PRODUCTS

Joyce L. Acomb	Hogs
R.D. #1, Dansville, NY 14437	Hatfield Packing Co.
May 14, 1984	Hatfield, PA 19440

Borrower--Joyce Acomb

Joyce L. Acomb May 14, 1984	William E. Humphrey County Supervisor
Hatfield Packing Co. 5/23/84	J. Kenneth Jones

FARMERS HOME ADMINISTRATION
129 Main Street
Leicester, New York 14481

May 31, 1985

Mrs. Joyce L. Acomb
RD # 1
Dansville, New York 14437

Dear Mrs. Acomb:

This letter will serve notice that Farmers Home Administration will no longer release hogs, livestock or crop proceeds to you.

The proceeds from the sale of this loan security will henceforth be applied to your Farmers Home Administration loan accounts.

Sincerely,

William E. Humphrey

WILLIAM E. HUMPHREY
County Supervisor

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Dwight Coleman, Lester Crows-heart, Sharon Crowsheart, Russell Folmer, Anna Mae Folmer, George Hatfield, June Hatfield, Donald McCabe, Diane McCabe, Gary Barrett, Rosemary K. Barrett, Richard L. Harmon, Betty J. Harmon, Larry L. Robertson, Nancy K. Robertson, Ross Wade and Maureen Wade, on behalf of themselves and others similarly situated,

Plaintiffs,

Civil No.
A1—83—47

vs.

John R. Block, Secretary of Agriculture; Charles W. Shuman, Administrator of the Farmers Home Administration; Ralph W. Leet, State Director of the Farmers Home Administration; Harold T. Aasmunstad, Glen W. Binegar, Allen G. Drege, Dennis W. Larson, Odell O. Ottmar, and Joseph J. Schneider, as District Directors of the Farmers Home Administration for North Dakota; and Samuel Delvo, Lorace Hakanson, Larry Leier, Charles Schaefer and James Well, as County Supervisors of the Farmers Home Administration in North Dakota,

Defendants.

MEMORANDUM AND ORDER

A history of the Farmers Home Administration is a history of government programs addressed to financial assistance for small farm operators. The scope and development of the programs reflect a recognition by the government, and in particular Congress, that a strong and stable farm economy is vital to the welfare of the nation.

BEST AVAILABLE COPY

presentative of the national class, the reasoning and conclusions as to this issue contained in the order granting the preliminary injunction are adopted by reference. See id.

The, third step concerns what form the injunctive remedy should take. The form of relief in this case has been subject to substantial analysis and input by both parties. Motions for modification of the preliminary injunction have been briefed, argued, and resolved. No further delay is warranted or necessary.

Therefore, IT IS ORDERED

A. That the plaintiff class shall consist of:

"all persons who have obtained a farmer program loan from the Farmers Home Administration, and who are or may be eligible to obtain a farmer program loan from the Farmers Home Administration, and whose loans are or will be administered in the Farmers Home Administration offices located throughout the United States, but the national class does not include:

1. borrowers who reside in states where a state-wide class action is requested (and not denied at a later time), or is already certified; or

2. borrowers who have presently filed actions that directly relate to the implementation of 7 U.S.C. Sec. 1981a, the constitutionality of a pre-hearing cut-off of necessary family living and farm operating expenses, and the constitutionality of the Farmers Home Administration appeals procedure."

This Court presumes that all litigants who are .presently before another court on the same issues have opted out; however, such litigants may request permission from their presiding court to enter the national class.

B. That the defendants, their agents, subordinates and employees are enjoined from proceeding to liquidate, or to terminate the living and operating allowance previously determined in the administration of any existing loan unless:

1. the defendants shall give any plaintiff against whom defendants propose to proceed at least 30 days notice:

a. That informs the borrower of his right to an informal hearing to contest the liquidation

or termination and to establish eligibility for loan deferral pursuant to 7 U.S.C. Sec. 1981a;

b. That provides the borrower with a statement that gives the reasons for the proposed liquidation or termination;

c. That informs the borrower of the factors that determine eligibility for loan deferral; and

d. That informs the borrower of the official who would preside at the informal hearing. The official designated shall not have been actively involved in the initial decision of liquidation or termination.

2. The official presiding at any informal hearing shall present his decision in writing, giving his reasons therefore, which decision shall be furnished to the borrower.

C. That the defendants, their agents, subordinates, and employees, are enjoined from:

- Accelerating the indebtedness of the plaintiffs,

- Foreclosing on the real property or chattels of the plaintiffs,

- Demanding voluntary conveyance by the plaintiffs, or

--Repossessing chattels of the plaintiffs or in any way proceeding against or depriving the plaintiffs of property in which the defendants have a security interest,

unless:

1. defendants shall give any plaintiffs against whom the defendants propose to proceed at least 30 days notice:

a. That informs the borrower of his right to a hearing to contest the proposed action and to establish eligibility for loan deferral pursuant to 7 U.S.C. Sec. 1981a;

b. That provides the borrower with a statement that gives the reasons for the proposed action;

c. That informs the borrower of the factors that determine eligibility for loan deferral;

d. That informs the borrower of the official who would preside at the hearing. The official designated shall not have been actively involved in the initial decision to take the proposed action.

2. The official presiding at any such hearing shall present his decision in writing, giving his reasons therefore, which decision shall be furnished to the borrower.

D. Before moving for judgment of foreclosure in existing actions by FmHA, the defendants shall comply with section C above.

E. Nothing in this order shall prevent the bona fide "graduation" of a plaintiff into traditional services pursuant to 7 C.F.R. Sec. 1843.30 (1983). 57/

This injunction is subject to the following limitations:

1. Where the borrower has totally abandoned any secured property and that property is at substantial risk of irreparable injury, defendants may take the necessary steps to protect the secured property; however, once the necessary steps have been taken to protect the property, or where there is abandonment of the property and no substantial risk of irreparable injury, defendants shall comply with the requirements of this injunction.

2. Defendants may proceed with foreclosure where the borrower knowingly and voluntarily consents to foreclosure in writing. However, where a borrower consents to foreclosure following the termination or substantial reduction of family living or. farm operating expenses, the FmHA must establish, in any subsequent proceeding contesting the foreclosure, that the borrower's decision to allow foreclosure was voluntarily made, not coerced by the termination or reduction of living and operating expenses, and made with full knowledge of his rights, including the right to appeal the decision concerning living and operating expenses and to request deferral under 7 U.S.C. Sec. 1981a.

3. Where a borrower is found guilty of conversion, defendants may immediately terminate family living and

57. But see 7 C.F.R. Sec. 1980.147 (subpart B, farmer program loans, "no graduation requirement for guaranteed loans"), Sec. 1980.290 (subpart C, "no 'graduation' requirement for [emergency livestock] loans"), and Sec. 1980.589 (subpart F, economic emergency loans, no 'graduation' requirement for guaranteed loans").

farm operating expenses., take the necessary steps to protect the property, and initiate foreclosure proceedings: nonetheless, such a borrower must still be afforded an opportunity to apply for deferral under 7 U.S.C. Sec. 1961a,

4. This injunction shall not apply to Situations where a) the borrower initiates Chapter 7 bankruptcy and the trustee in bankruptcy abandons the property to the United States or to another lienholder who commences foreclosure; and b) the borrower is discharged in bankruptcy.

IT IS FURTHER ORDERED that defendants John R. Block and Charles W. Shuman shall give notice to their agents, subordinates, and employees who are charged with implementing FmHA loans, of the contents of this order.

Plaintiffs have moved for attorneys fees and costs under the Equal Access to Justice Act, 20 U.S.C. Sec. 2412. Both parties briefed the issue of eligibility for such an award under 28 U.S.C. Sec. Sec. 2412(b), or, alternatively, 2412(d) (1) (A) The parties based their briefing on the status of the suit as of July and August, 1983. Now that the suit has come to a conclusion, the Court deems it appropriate to give the parties an opportunity to make additional arguments, should they so desire. Therefore, IT IS ORDERED that plaintiffs have twenty (20) days from the date of this order to brief the issue and to submit their bill of costs and fees. Defendants have ten (10) days from the date of receipt of plaintiffs ' brief and bill to respond to both.

Signed at Bismarck, North Dakota this 17th day of February, 1984.

Bruce M. Van Sickle, Judge
United States District Court

NOTICE OF. ENTRY
Take notice that the original of this copy was entered in the Office of the CIerk of the United States District Court for the District of North Dakota on the 17th dayof February, 1984.

CLETUS J. SCHMIDT CLERK
By: C. D. Maier, Deputy

5-30-85 p/c C/F/P PAUL DENDIS

Discussed with him releasing hog checks as I have been doing, pending outcome of appeal, since I was under the impression that this was consistant with Coleman v. Block. C/F/P advises that if I did not sign the f & h plan, then I did not agree to release and should send Mrs. Acomb a letter telling her there will be no more releases. This advice concurrs with OCG advice to C/F/P.

W.E.H. (William E. Humphrey)

5-30-85 p/c C/F/P PAUL DENDIS

Discussed with him releasing hog checks as I have been doing, pending outcome of appeal, since I was under the impression that this was consistant with Coleman v. Block. C/F/P advises that if I did not sign the f & h plan, then I did not agree to release and should send Mrs. Acomb a letter telling her there will be no more releases. This advice concurrs with OCG advice to C/F/P.

W.E.H. (William E. Humphrey)

HATFIELD PRICES	ACTUAL PRICES	LOSS
45.60	42.00	319.42
46.60	43.06	291.30
46.60	43.75	90.20
49.35	44.56	430.38
49.35	47.00	198.78
48.35	46.55	161.76
49.35	46.50	222.58
46.60	45.19	129.36
46.69	44.50	379.97
46.60	42.07	378.99
45.85	45.00	79.90
45.75	44.07	284.34
45.85	43.13	236.74
42.60	41.00	130.89
42.60	40.25	206.04
40.85	40.25	51.02
40.85	39.00	74.98
45.35	44.94	99.50
45.85	44.56	233.50
45.35	44.06	109.99
45.00	42.50	221.47
44.85	43.04	168.58
45.35	41.67	329.17
47.85	45.90	183.63
48.35	46.25	189.75
45.60	45.00	114.93
45.60	44.50	105.10
41.85	40.33	144.73
41.85	41.00	167.91
41.85	40.50	127.10

HATFIELD PRICES	ACTUAL PRICES	LOSS
41.35	40.25	103.89
39.35	40.25	(85.18)
40.85	40.00	85.17
41.35	40.00	130.20
41.35	41.00	35.53
42.60	43.00	(38.14)
45.35	44.50	77.01
47.35	46.00	88.56
47.35	46.00	131.89
48.75	48.00	71.28
51.60	48.00	342.90
51.60	48.00	320.94
51.60	51.00	59.22
54.10	51.50	225.16
54.10	53.10	86.27
58.60	57.50	210.54
59.85	58.50	126.56
61.85	59.75	408.63
64.35	60.00	403.76
63.35	60.25	261.76
63.35	62.00	120.00
63.60	62.60	84.81
62.35	63.00	(60.07)
61.00	62.25	113.90

2,995--# of hogs sold
$17,371.27--Total lost W/Comm.

WATERLOO PRICES
(Hatfield pickup)
5/21/85 - 10/7/86

5/21-44.10
5/29-44.85
6/4-45.60
6/11-46.60
6/18-47.85
6/25-49.35
7/2-48.35
7/9-49.35
7/16-47.85
7/23-46.60
7/30-43.10
8/6-45.85
8/13-45.75
8/20-45.85
8/27-42.60
9/3-40.85
9/10-40.85
9/17-41.85
9/24-43.10
10/1-43.85
10/8-46.10
10/15-45.35
10/22-45.85
10/29-45.85
11/5-45.35
11/22-44.85
11/26-45.35
12/3-47.35
12/10-47.85
12/17-48.35
12/24-48.35
12/31-47.35
1/7-47.35
1/14-46.35
1/21-45.85
1/28-46.35
2/4-45.60
2/11-45.60
2/18-44.35
2/25-41.85
3/4-41.10
3/11-41.85
3/18-41.85
3/25-41.35
4/1-41.35
4/8-39.35
4/15-40.85
4/22-41.35
4/29-42.60
5/6-45.35
5/13-47.35
5/20-48.75
5/27-49.10
6/3-51.60
6/10-51.60
6/17-54.10
6/24-58.60
7/1-58.35
7/9-61.85
7/16-59.85
7/22-61.85
7/29-64.35
8/6-63.35
8/12-63.35
8/19-63.60
8/26-62.35
9/2-61.00
9/9-61.60
9/9-61.60
9/23-57.35
9/30-53.60
10/7-52.85

UNITED STATES DISTRICT COURT
Western District of New York

United States of America — SUMMONS IN A CRIMINAL CASE

v. — Case # 88-592M

Joyce Acomb
RD #1
Dansville, N. Y.

You are hereby summoned to appear before the United States District Court at the place, date and is set forth below:
U. S. Magistrate Court, 100 State Street, Rochester, NY
Room 228, October 28, 1988

Honorable Kenneth Fisher
Answer a complaint charging you with a violation of Title 18 United States Code, Section 658,
description of offense:
Unlawfully disposing of propeerty previously pledged to the Farmer's Home Administration.

Kenneth R. Fisher, U. S. Magistrate--October 18, 1988

ROCHESTER, NEW YORK
DEMOCRAT & CHRONICLE

DANSVILLE WOMAN CHARGED WITH SELLING - LOAN COLLATERAL

A Dansville woman appeared before a federal magistrate yesterday on charges that she illegally sold $650,000 worth of hogs that had been pledged as collateral on six loans from the U. S. Farmers Home Administration.

Joyce Acomb of 8317 Groveland Road did not enter a plea, and her arraignment was adjourned to Nov. 11 by U. S. Magistrate Kenneth Fisher. She was released on $5,000 bond.

Assistant U. S. Attorney Charles Pilato said Acomb is accused of violating federal law prohibiting the sale of property pledged as collateral for six Economic Emergency Loans totaling about $524,000. Pilato said Acomb failed to receive required FmHA approval when she sold the hogs between June 1985 and October 1987.

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES
Buffalo, New York

May 30, 1990

Ms. Joyce Acomb
RD #1
Dansville, NY 14437

RE: Federal Prosecution

Dear Joyce:

I have been told that unless an agreement is reached on or before June 15, 1990 that you will be indicted by the federal grand jury.

In response to my last letter to you, Bruce called to say that there was additional documentation on the use of the funds.

Contact me immediately to inform me as to the following:

(1) Whether you still want me to represent you in the federal case;

(2) Whether there are any additional records as to the use the funds were put to;

(3) Any additional information to show that the funds were used for farm-related expenses.

I urge you to contact me immediately.

Very truly yours,

Joseph M. LaTona

U. S. DEPARTMENT OF JUSTICE
United States Attorney
Western District of New York
August 29, 1990

Joyce Leah Acomb
Rt. # 1
Dansville, NY 14437

RE: United States v. Joyce Acob

Dear Mrsw. Acomb:

Enclosed please find the letter dated August 24, 1990 regarding the above-captioned case. This letter indicates that you are no longer represented by Mr. LaTona. Please advise me no later than September 7, 1990 who is representing you. If I do not hear from you by that date, this case will be presented to a federal grand jury and you will be indicted.

Very truly yours,
DENNIS C. VACCO
United States Attorney

by: Christopher V. Taffe
Assistant United States Attorney

LIPSITZ, GREEN, FAHRINGER ROLL, SALISBURY & CAMBRIA
ATTORNEYS AT LAW
42 DELAWARE AVENUE
SUITE 300

BUFFALO, NEW YORK 14202 - 3901

October 4, 1990

CERTIFIED MAIL

Ms. Joyce Acomb
R.D. # 1
Dansville, NY 14437

Dear Ms. Acomb:

Please be advised that on September 27, 1990 Federal Magistrate Fisher dismissed the felony complaint that was pending against you. Mr. Taffe of the United States Attorney's Office stated that they will indict you within the next two months.

Please be advised that my office will not undertake any further efforts to represent you. The purpose of this letter is to encourage you to engage the services of new counsel to protect your interests.

Very truly yours,

LIPSITZ, GREEN, FAHRINGER, ROLL, SALISBURY & CAMBRIA

Joseph M. LaTona

JLT/slb

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

No. 90-6303

v.

JOYCE ACOMB,
Defendant-Appellee.

VOLUNTARY DISMISSAL

Pursuant to Federal Rule of Appellate Procedure 42 (b), Appellant, United States of America, hereby voluntarily dismisses the above-captioned appeal.

Respectfully submitted,

LESLIE K. LAGOMARCINO
Attorney
Office of the General Counsel
U. S. Department of Agriculture
Washington, D. C. 20250-1400
(202) 447-4733

WILLIAM A. MUOIO
Attorney
30 West Broad St., Suite 506
Rochester, N. Y. 14616
(716) 232-7836

SO ORDERED. FOR THE COURT

January 29, 1991 March 12, 1991 Elaine B. Goldsmith
(Date) Clerk

July 14, 1986

Mr. William E. Humphrey, County Supervisor
Farmers Home Administration
129 Main Street
Leicester, N. Y. 14481

Report Re: Mrs. Joyce L. Acomb, RD # 1,
Dansville, N. Y., 14437
Case No. 37—26—134301798
Date of Solicitation: 4/25/86
Solicitation No.: 37—00—06—02
Date of completion: 7/14/86

Dear Mr. Humphrey:

After a considerable length. of time, I have finally been able to complete the assignment for Joyce L. Acomb. I called Mrs. Acomb on April 29, just after receiving this task order and she advised me that they were busy planting and would let me know when it would be convenient to spend some time with me. I called again on May14 and June 10. At that time of the last call, we did set up an appointment for June 16. I spent the day and evening with Mrs. Acomb and Bruce. Most of the time was spent preparing the papers to take with them to their appointment with you on June 18. I called again on June 20, 27 and July 7 to set up an appointment to check the equipment inventory, hog inventory and look at the crops. The appointment was set for July 8 and I went back on July 10 to complete the work.

Mrs. Acomb lives on a farm consisting of a total of 290 acres with 214 tillable. The farm is located about 5 miles north of Dansville on Rte. 63 in the towns of Sparta and West Sparta. Joyce is 52, and, with the help of her husband Bruce, 56, her son

Brent, 26, and daughters Lori, 28, and Renee, 24, she plants the farm mostly to corn and feeds the corn plus a quantity of purchased corn to her 500 plus sow herd and 2000 plus market hogs. The three children are single and still live at home. They all seem to have a very sincere interest in the farm and all share in the work. In 1985, there was no additional hired help, but due to expanding the sow herd, a full-time man is now on the payroll and he lives in the tenant house on the flats where Bruce and Joyce lived prior to the renovation and their moving to the house across Route 63 from the hog barns, which was done a number of years ago.

The following numbered items conform to the numbered instructions on Form FmHA 2024—12:

(l) To present a picture of the past performance, I first prepared FmHA form 1960—12 which is attached to this report. This shows a trend of increasing debt and diminishing Net Worth. Net income was reduced considerably in the last two years compared to the previous two. In conjunction with the 1960-12, I also prepared a statement of income and expense for 1985, 86 and 87. The actual 1985 figures were taken from the income tax return, and the other two years were estimated with the help of Mrs. Acomb from her records. Mrs. Acomb keeps very good records. This information is on Schedule A and is attached and made a part of this report. In checking into the reason for the very low net income in 1985, I contacted the New

York State Crop and Livestock reporting service, and they gave me the average live hog and feeder pig prices from 1982 through 1985. These prices are on Schedule B which is attached to and is being made a part of this report. As you will note, prices were fairly good in 1982, less in 1983 and 1984, and considerably less in 1985. This helps to provide at least part of the answer why profits declined in 1984 and 1985. Current prices of live hogs are back in the 1982 range indicating 1986 and, hopefully, 1987 may be good profitable years again for the hog producer. Due to the fact that hogs are a "short season" animal -- it only takes about a year from the time the sow is bred that you can have live hogs going to market -- I feel an important tool that large hog producers should consider, and Acombs are large hog producers, is hedging on the Commodity Market. If handled properly -- only for hedging and not for speculating, -- a profit can usually be locked in on every group of hogs grown for slaughter. In regard to debt structure, needless to say, the situation is considerably over-leveraged -- in 6 years, total debt has grown from around $600,000 to over $1,000,000. There have been hogs on this farm for a number of years, but recently, the number of sows has been increased from 273 on 1/1/85 to 561 on 7/8/86, with plans to grow to over 600. This is a very productive farm, with corn consistently yielding in excess of 150 bu. per acre. Not much has been spent on capital expenditures in recent years due to the lack of funds and credit. There is a need for 20 new boars for breeding @ $300 and a continuing investment each year of about this same amount to preserve the quality and efficiency of the hog operation. With the increase in sow numbers and a project to remodel the crates in the farrowirig houses, there is a need for about $20,000 with an additional $4,000 for fence and miscellaneous items.

(2) 1986 about one half gone, made it quite easy to estimate whether the plan for this year was feasible. With fuel and feed costs lower, and hog prices higher, this makes for a real good working relationship for the hog producer. I helped Mrs. Acomb prepare her Farm and Home Plan current financial statement, actual figures for 1985 and the projection for 1986. These forms are not included as part of this report as they were needed just two days after we prepared them in a meeting with you. On the attached Schedule A, I listed the 1985 and 1986 income and expenses for easy comparison. On 12/31/86, there were 338 sows so the average for 1986 of 386, considering that on July 8, there were 561, is a very conservative figure. The number of pigs weaned per litter was left at the same as 1985, although figures in 1986 are indicating an increase to slightly over 7. I have prepared Schedule C showing a comparison of performance on the Acombs to the performance goals for hog producers with some explaining notes and have attached this schedule to this report and making it a part of it. You will note that the pigs farrowed and pigs weaned are below the norm on the Acomb farm although most everything else is pretty much in line. This is the heart of the business in a farrow to finish operation. Profits are made in the farrowing house but begin a lot sooner than that in good breeding -- both sow and boar -- good sanitation -- good ventilation -- proper medication and feeding programs -- and a good environment. In getting back to Schedule A and the feasibility of the 1986 plan, I feel it has a very good chance of working. In comparing both the income and expense items, there seems to be a right relationship between the two years with the prices — currently in excess of the ones used in the projection -- being the major factor for the realization of a considerably increased net income. With this kind of income, it may prove a deferral unnecessary. My logic in going on in Schedule A with a projection of 1987 income and expense was to show the continued growth which has almost been accomplished at the present time with a total of 561 sows and gilts on the farm. Assuming that the market will hold up, or, by hedging, the projected income could be

a reality, and, it appears that costs will not change appreciably, the present feed grain situation holding down the largest cost in the operation. Another reason for listing 1987 is that it will be here in less than six months, so it is necessary to look at least that far ahead. Also, the Acombs are planning on getting back into the dry bean production again as long as it appears the price of corn will remain relatively cheap. They can sell the beans and buy corn and be much further ahead; but, they do not plan to risk it all and will still plant half the acreage to corn.

(3) The 1986 plan was prepared on the Farm and Home Plan form and is not included with this report as Mrs. Acomb took it to your office to give you when she met with you.

(4) I made a thorough inspection of the real property which has all been kept in good repair. We checked every piece of equipment on the Security Agreement and I made a complete list of all the items with a note of the condition of each on three pages of Form FHA 440-21 and these are attached to this report. There is also an inventory of all the hogs on the Acomb farm and the Carney-Delavergne farm included on one page of the 440-21 forms.

(5) 1 will address the weaknesses and make my suggestions at the conclusion of my report.

(6) 1 contacted Federal Land Bank. Mr. Victor Meyers has the handling of the Joyce Acomb account. There is no problem from Mr. Meyers' point of view. The present balance on the mortgage they hold is $13,239 less allowance of $1600. for stock. The payments are $480 semi-annually plus interest at 5 3/4%. The last payment was due June 1, 1986 and was paid on May 27, 1986.

I also talked with the ASCS office. There is a Commodity Credit Corp. loan for corn of $37,725.03. Interest is accumulating at a hefty $510.86 per month at a rate of 16.25%. The committee feels the entire amount is collectable and are not planning on discounting the loan. There has been no payment since September, 1983, and the matter has been brought to the attention of their attorneys and this office is expecting them to take legal action to obtain a judgment, but they have been waiting for three years and it hasn't been accomplished yet, due to attorneys procrastinating.

(7) Mr. Acomb pretty much makes all the decisions on the farm. He is a good listener and does use technical assistance when offered. He is backed into a corner now and unable financially to do much of anything different than what he is doing. One example is he is only using 50 units of nitrogen on his corn with no phosphorous or potash. In 1985 his corn averaged 156 bu. per acre on this fertilization program and I saw corn from 12" high to 7' high that all looked very nice with good color and strong stalks planted at a population rate of 28,000 plants per acre. He does use weed spray and has obtained excellent control. He has changed his weed control program so that he will be able to plant beans on half the acreage in 1987. He knows he has been short-cutting the hogs on medication, but not on the basic protein and mineral needs. This, again, was to cut costs.

(8) The Acombs have not participated in the ASCS grain support or diversion programs since 1983 --reason being the funds would have been applied to their loan so they would not benefit directly, but would have benefited indirectly by reducing their indebtedness.

Geneseo. The information was reported on Form FmHA 440-13 and is attached to this report.

(10) A tax search was also obtained from the Livingston County Treasurer's office in Geneseo and this information is also recorded on Form FmHA 440—13 and is attached to this report. The taxes have not been paid for 1985 at the time of my tax search.

(11) The 1985 actual income and expense figures were prepared on the Farm and Home Plan form which is not attached to this report as Mr. and Mrs. Acomb took it with them for their meeting with you on June 18. The actual 1985 income and expense is prepared on Schedule A which is attached to this report.

(12) The 1991 plan was also prepared with Mr. and Mrs. Acomb and this plan was also taken with them to their meeting with you. The 1991 plan was not substantially different from the 1986 plan except that it did include income from half the acreage planted to dry. beans instead of corn. That is another reason I projected the figures for 1987 on Schedule A to show this one transition from the 1986 plan to the 1991 plan.

Strong points of Joyce L. Acomb:

I would rate as the No.1 strong point for Mrs. Acomb, the fact that she has her entire family strongly behind her in her ordeal. I would rate immediately behind this their collective knowledge of the hog business overall. Then would come the fact that they have some of the most productive land in New York State and have the know-how to work it and make it produce. I found the entire hog operation clean. There wasn't a place I couldn't go without boots. Ventilation was excellent in

all barns except the boar barn which had no ventilation. There is a lot of hand work to be done in keeping farrowing stalls clean. Most of the sows were fed on the floor, which is not a good practice from a disease standpoint. I would like to see them able to convert the farrowing stalls to the raised stalls for better sow and pig health and more weaned pigs per litter. I talked with Gary Westervelt of Watkins Glen who the Acombs got the idea from to raise their farrowing crates. He spent over $300 per crate for his 91 sows and had the work all performed by a contractor. Mr. Acomb feels he can buy the materials and do the work himself for under $100 per crate. Mr. Westervelt has 46 crates which means he does not have to wean his pigs early and weans at four weeks. He does not finish any hogs and sells all his production as feeder pigs, mostly direct to customers that finish them. He had just recently sold a load of 222 pigs that averaged 514 lbs, for $61 each or about $1.14 per lb. This tends to confirm the price used for feeder pigs in the 1986 and 1987 plan on Schedule A of $1.00 per lb and $.95 lb. respectively. Another strong point is that most of the larger and more expensive equipment was under cover and well cared for. Mr. Acomb has a nice shop to work in and does most all his own repair work. They grind their own feed using soybean meal and minerals and the nutritional advice of Finger Lakes Nutrition Co. Feed cost is now averaging $131 per ton and Mr. Acomb feels it will be even lower this fall when corn harvest starts as he anticipates corn prices to be much lower. They plan to utilize the farrowing stalls to much greater advantage by weaning at three weeks instead of four or five weeks as they do now. Most large farrowing units are weaning early, some at even less than three weeks. This accomplishes two things: (1) it gets the sow bred back sooner, thereby utilizing the investment in her more efficiently and producing more pigs for market, (2) makes the need for fewer farrowing

crates thus lowering the investment in crates, feeding and watering equipment and buildings. At this time of the tremendous growth in the Acomb's sow herd, this becomes a real important factor.

Weaknesses in the farm operation and recommendations:

I would rate the biggest weakness on the Acomb farm operation as Mr. Acomb. He has probably cost the farm more than all the equipment, hogs and crops have ever lost. I mentioned earlier in this report that Mr. Acomb is a listener and eager to learn new information that could be helpful to the business. He tends to be very strong-willed and some times experiments with his own unresearched ideas at times when they cannot afford to be a research farm. One example is nitrogen only on corn and he talks like he plans to do this with the bean crop. I know he was forced into this decision by financial pressure, but talks like he stumbled onto something really big. Their decision not to participate in the ASCS program cost them $15,718.86 this year. In my opinion, this was poor judgment even if it meant CCC would get the payment.. The loan with CCC will have to be paid some time and how much easier could it be paid than under the present programs.

A very similar situation exists with the marketing of hogs. There is no question that Hatfield Packing is the best market for fat hogs, but the hogs are marketed elsewhere so they could receive the check without payment being made to them and FmHA. It is business decisions like these that simply dig the hole deeper.

It is important that feed conversion figures can be calculated with some degree of accuracy. This may mean a weigher on the feed grinder or some other method. On this

volume of hogs, feed conversion has to be better than 4 # per pound of gain. Maybe the conversion is better, but figures are not available and calculating is done only on an overall basis.

There is a problem of a persistent cough in all the inside pens, nursery and growing groups. 1 did not hear it in the open-sided pens and it could be a ventilation problem although the air seemed very clean in all inside pens. This might possibly originate in the farrowing house and might be corrected with the changes planned in raising the crates.

Mrs. Acomb does keep very good records on hog inventory, but not on individual sow performance. I feel it is just as important to keep records on each sow's performance - litter size, litter weight, weaning weight, mothering ability, conception rate-as it is to keep records on the individual performance of sows.

This farm was successful and profitable in the past, and with proper management and timely decisions, surely can be successful and profitable again.

Moses Garippa, Contractor
RD # 1, Canaseraga, N.Y. 14822

United States Department of Agriculture

Farmers Home Administration

James Hanley
Federal Bldg.
ROOM 871, P.O. 7318
100 South Clinton St
Syracuse, N. Y.
13261-7311

October 16, 1991

TO: County Supervisor, FmHA Leicester, New York

SUBJECT: Joyce Acomb OIG Investigation

Attached is a copy of a memo from OIG that the U.S. Attorney has declined prosecution. Based on the facts in our file, it appears that these loans have been accelerated. Therefore, the next step is to proceed with Step 2 of the Foreclosure Checklists and forward this case to your District Director, He will then forward this case to us so we can refer it to the U.S. Attorney.

PIERRE LABOURDE
State

cc: Liaison Officer, FmHA
Regional Attorney, OGC
AIG/I Washington, DC
OIG, New York, NY
Farm Program

October 8, 1991

Subject: Joyce L. Acomb, Dansville, NY
Unauthorized Disposition of FmHA Property

To: Pierre L. LaBourdette
State Director
Farmeres Home Administration
Room 871, Federal Building
100 South Clinton Street
Syracuse, NY 13260

Christopher V. Taffe, Assistant United States Attorney, Western District of New York, has declined prosecution of Joyce Acomb. Attached is a copy of AUSA Taffe's letter outlining his reason for the declination. Please inform this office and all other distributees shown below of any administrative or other actions taken as a result of this investigation.

JOSEPH J. YARRISH
Regional Inspector General
for Investigations

U.S. Department of Justice
United States Attorney
Western District of New York
620 Federal Building
Rochester, New York 14614

October 3, 1991

Brian Chmura
Special Agent
Office of Inspector General
U.S. Dept. of Agriculture
26 Federal Plaza, Room 1707
New York, NY 10278

Re: Joyce L. Acomb

Dear Brian:

The purpose of this letter is to formally provide you with the reasons, which we have previously discussed, upon which the declination of the above-captioned matter is based. I have stated to you in the past that this case has been extensively considered by this office and this office has determined that no prosecution will be undertaken. I have also assured you that this decision is not a reflection on your investigation which was done in a thorough and professional manner. Rather, due to extraneous circumstances, the case has become riddled with problems and the likelihood of success at a jury trial is very poor. I will review the reasons below, not necessarily listed in priority of importance.

By memorandum dated November 30, 1987, you forwarded a recommendation for prosecution against Joyce Leah Acomb for unlawful disposition of FmHA security property pursuant to Title 18, United States. Code, Section 658. As I have indicated, the investigation was complete and performed in a professional and competent manner. Nonetheless, there are proof problems relating to the identification of the targets by the employees of the livestock companies that would be a hindrance to a successful prosecution. The identification of the targets, by means of identifying who presented the hogs for sale, as well as the identification of the signatures on the various documentary evidence (checks, loan documents) is sufficiently in question to create a question with respect to a successful prosecution. Further, proof that the hogs sold were subject to an FmH.A security agreement is also lacking.

The first point leads into the second point which is the age of the case. it was forwarded to us in November of 1987, but a combination of factors lead to the case becoming stale. Among these factors are the ongoing civil action which was allowed to preceed the criminal case in pursuit of a global settlement; the limited resources of this office which required several transfers of the investigation within this office; and, your brief hiatus with the National Guard. The age issue also raises the fact that the statute of limitations has run on most of the counts.

A related area to the problems with the proof in the case concerns the utilization of William Humphrey, County Supervisor, as a primary Government witness. Unfortunately, there was no way around presenting the case without offering the testimony of William Humphrey. And, due to the fact that Mr.. Humphrey's testimony was substantially discredited by Judge Michael Telesca in the civil action, use of Mr. Humphrey's testimony in the prosecution of this case created a serious problem. As we discussed, it would be essential for Mr. Humphrey to testify because he is the only one that would be in a position to discuss the fact that these loans were actually given to Joyce Acomb. Even if we did not call Mr. Humphrey, the defense most likely would have called him and would have been in a position to create similar problems as they did in the civil action.

An additional factor we considered was the fact that your analysis of the bank records revealed that substantially all of the money that was obtained through the conversion of the hogs went back into the farming business. There is very little indication that the Acomb's benefited financially from this conversion other than allowing the business to continue. There are no expensive car or fancy house purchases that would add some jury appeal to the case.

Another factor is the potential defense being raised by the defendant relating to the moratorium placed on the collection activity of the Farmers Home Administration in the Coleman V. Block action. The existence of this moratorium creates the potential for serious jury question concerning Acomb's intent to defraud the Government, in view of the confusion created by that moratorium. **Based on my review of the correspondence submitted by Joyce Acomb, it appears that such a defense is quite likely to be raised and is viable.**

Finally, given the fact that the United States lost its civil action against Joyce Acomb, there is the potential for a charge of vindictiveness against the Government in bringing this subsequent criminal action. While it is something that, in and of itself is not a reason to decline prosecution, it is one factor that cannot be ignored.

I wish to again assure you that this office does not consider the conduct of Joyce Acomb as being lawful. Quite the contrary given the amount of money that. Joyce Acomb ultimately obtained. It is clear that she was not doing something that was in accordance with proper legal standards. **The point that we had to address in our review is whether we can prove a criminal case against her. We do not believe we can** and that decision is in no way a reflection upon your excellent investigation. Although we discussed this case quite extensively if you have any questions, I would expect that you will call me."

Sincerely,

VACCO
aces Atto

CHRISTOPHER V. TAFFE
tant U

By: CHRISTOPHER V. TAFFE
Assistant United States Attorney

The Honorable Daniel P. Moynihan
United States Senate
Suite 203
The Guaranty Building
28 Church Street
Buffalo, New York 14202

Dear Senator Moynihan:

Thank you for your letter on behalf of Mr. Charles B. Acomb, concerning his wife, Joyce, and her debt to the Farmers Home Administration.

We understand that Mrs. Acomb **is currently under indictment** in Federal District Court for the conversion of security. Because this case is before the Court, we cannot comment on it at this time.

We hope you find this information helpful in responding to your constituent.

Sincerely,

LaVerne Ausman
Administrator

Rt. #1, Box.81
Dansville N.Y. 14437
February 20, 1992

John DeMartino
282 U. S. Court House
100 State St.
RocheEter, N.Y. 14614

Dear John:

I would like to get a complete trial transcript of case #CIV-84-1389T, United States vs Joyce L. Acomb.

I would like for you to send me the direct and cross-examination of William Humphrey first. Please find enclosed $100.00 to start. If you need any additional monies, please send request in enclosed self-addressed stamped envelope. Thank you.

Sincerely,

Joyce L. Acomb

Enc: 1

8317 State Rte. 63 N.
Dansville, NY 14437
August 7, 1995

Mr. John DeMartino
U.S. Court House
State Street
Rochester, NY 14614

Dear Mr. DeMartino:

Please find enclosed a check for $550.00 as prepayment in full for transcript of trial held on September 18th and 19th, 1990, in Judge Telesca's Court, CIV-84-1389T. Also, find enclosed a copy of Judge Telesca's Order following the trial. This document has been added so as to avoid any mistakes in regard to trial identification, CIV-84-1389T. Also, find enclosed a copy of our check register in regard to a $100.00 check you received for my first request. You will recall that I had originally asked for the direct testimony and cross of witness, William E. Humphrey. You then told me Personally, sometime later outside the Clerk's office, next to entrance to Judge Telesca's Court, "That you would do the whole transcript and not charge that much". Since that time you have made innumerable promises that you would send it to our home and even stated at one time during a phone conversation that you had sent it, even gave us a time and date. Later, you will recall that I visited your office, and you apologized for not being truthful, that you recognized me as a stand up fellow. You said that you would do the transcript and send it out. As you know, that has never happened.

I pray that you will now take note that we are citizens of the United States of America, and we have every right to a copy of this trial transcript and record of any pretrial record taken in Judge Telesca' s Court on Monday, the 17th of September, 1990. This is in reference to any and all records of the meeting in Judge Telesca's office on the Monday morning attended by Judge Telesca, lawyer William Muoio, U.S.Attorney Christopher Taffe, lawyer John F. Sperenza, U.S.Attorney Charles Pilato and the U.S. Attorney from Buffalo who tried the case, lawyer Donald Simet.

Please advise me by letter when we can expect this transcript. I recall that you told me in your office that sometimes you do this much material overnight during a trial.

Please review Federal Rule Sec.753 of Title 28.

Sincerely,

Charles B. Acomb

ACE CONSTRUCTION COMPANY
PH. 716-535-6804
5317 STATE ROUTE 63 NORTH
DANSVILLE, NY 14437

817 — 19 25-

Pay the sum of Sixty Dollars and 00/100 $ 60.00

KEY BANK OF NEW YORK
MAIN & CLARA BARTON STREETS
DANSVILLE, NY 14437
DANSVILLE OFFICE 074

For Transport of Cow 10-24-1989 Charles B. Ace

⑆022300361⑆ 274 00 170 4⑈

301

BEST AVAILABLE COPY

Rochester Telephone

MONTHLY SERVICE 03-22 THROUGH 04-21
1992

LONG DISTANCE CALLS

1 0224 GENESEO NY 716-243-4300
2 0227 ROCHESTER NY 716-232-4970
3 0303 ROCHESTER NY 716-263-5780
4 0303 ROCHESTER NY 716-263-5747
5 O304 ROCHESTER NY 716-247-2319
6 0304 ROCHESTER NY 716-546-7140
7 0304 ROCHESTER NY 716-263-5747
8 0305 ROCHESTER NY 716 263-5747
9 0307 ROCHESTER NY 716-546-7140
10 0309 LEICESTER NY 716-382-3221
11 0320 ROCHESTER NY 716-232-497O
12 0321 LEICESTER NY 716-382-9037

Underlined calls made to Judge Telesca's Court.

RochesterTelephone
(716) 335 5043 JUL 22 1992
MONTHLY SERVICE 07-22 THROUGH
08-21

LONG DISTANCE CALLS
0626 LEICESTER NY 716-382-3218
0626 ROCHESTER NY 716-263-3148
0703 CALEDONIA NY 716-538-6836
0703 CALEDONIA NY 716-538-6836
0703 CALEDONIA NY 716-538-6836
0703 CALEDONIA NY 716-538-6836
0708 CALEDONIA NY 716-538-6836
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0709 CALEDONIA NY 716-538-6836
0710 CALEDONIA NY 716-538-6836
0714 CALEDONIA NY 716-538-6836
0714 ROCHESTER NY 716-232-4970
0715 ROCHESTER NY 716-263-6263

Underlined number is Judge Telesca's court.

App. 304

Rochester Telephone

ACCOUNT NUMBER: 335504300
DEC 22 1992

MONTHLY SERVICE 12-22 THROUGH 01-21

LONG DISTANCE CALLS

1	1123	GENESEO	NY	716-243-3818
2	1123	GENESEO	NY	716-243-3818
3	1123	CALEDONIA	NY	716-538-6836
4	1123	GENESEO	NY	716-243-3818
5	1123	CALEDONIA	NY	716-538-6836
6	1125	CALEDONIA	NY	716-538-6836
7	1128	GENESEO	NY	716-243-3818
8	1201	CALEDONIA	NY	716-538-6836
9	1202	CALEDONIA	NY	716-538-6836
10	1202	CALEDONIA	NY	716-538-6836
11	1202	GENESEO	NY	716-243-3818
12	1203	CALEDONIA	NY	716-538-6836
13	1203	GENESEO	NY	716-243-3818
14	1203	GENESEO	NY	716-243-1798
15	1205	CALEDONIA	NY	716-538-6836
16	1207	CALEDONIA	NY	716-538-6836
17	1207	CALEDONIA	NY	716-538-6836
18	1207	GENESEO	NY	716-243-2271
19	1207	GENESEO	NY	716-243-2271
20	1208	ROCHESTER	NY	716-263-6263
21	1208	CALEDONIA	NY	716-538-6836
22	1208	CALEDONIA	NY	716-538-6836

App. 305

RochesterTelephone

ACCOUNT NUMBER: 335 5043

BILL DATE: APR 22 1993
LONG DISTANCE CALLS

45 0412 GENESEO	NY 716-243-2271
46 0413 GENESEO	NY 716-243-7000
47 0413 GENESEO	NY 716-243-2271
48 0414 GENESEO	NY 716-243-7000
49 0414 ROCHESTER	NY 716-263-5747
50 0414 GENESEO	NY 716-243-7084
51 0414 ROCHESTER	NY 716-428-1000
52 0414 ROCHESTER	NY 716-263-5747
53 0414 GENESEO	NY 716-243-2271
54 0418 GENESEO	NY 716-243-2271
55 0418 LIVONIA –	NY 716-346-3780
56 0420 ROCHESTER	NY 716-263-6263
57 0420 ROCHESTER	NY 716-263-5747
58 0421 GENESEO.	NY.716-243-7000
59 0421 GENESEO	NY716-243-7000
60 0421 GENESEO	NY 716-243-7000
61 0421 GENESEO	NY 716-243-7000
62 0421 GENESEO	NY 716-243-7000
63 0421 GENESEO	NY 716-243-7000

Rochester
Telephone

MONTHLY SERVICE 05-22 THROUGH
06-21
BILL DATE: MAY 22 1993

1	0422	GENESEO	NY 716-243-7000
2	0423	ROCHESTER	NY 716-263-5747
3	0423	ROCHESTER	NY 716-263-6263
4	0424	COHOCTON	NY 7 16-384-5010
5	0424	COHOCTON	NY 716-384-5010
6	0424	COHOCTON	NY 716-384-5010
7	0424	GENESEO	NY 716-243-2271
8	0425	GENESEO	NY 716-243-4090
9	0426	COHOCTON	NY 716-384-5010
10	0426	ROCHESTER	NY 716-263-5747
11	0426	ROCHESTER	NY 716-424-5500
12	0426	GENESEO	NY 716-243-2271
13	0428	GENESEO	NY 716-243-2271

RochesterTelephone
ACCOUNT NUMBER: 335 5043
BILL DATE: AUG 22 1993

18 0804 ROCHESTER NY 716-292-0554
19 0804 ROCHESTER NY 716-292-0291
20 0804 ROCHESTER NY 716-292-0291
21 0807 HONEOYEFLSNY 716-624-1751
22 0811 ROCHESTER NY 716-263-6263
23 0811 LIVONIA NY 716- 346-3118
24 0811 LIVONIA NY 716-346-3658
25 08 11 AVON NY 716-226-3321
26 0812 PERRY NY 716-237-2180
27 0817HONEOYEFLS NY 716-624-1751
28 0818 GENESEO NY 716-243-1427
29 0818 ROCHESTER NY 716-247-7368

Rochester
Telephone

MONTHLY SERVICE 10-22 THROUGH
11-21
ACCOUNT NUMBER: 335 5043 007234
BILL DATE: OCT 22 1993

LONG DISTANCE CALLS

1	0926	GENESEO	NY 716-243-2271
2	0927	GENESEO	NY 716-243-2271
3	0927	ROCHESTER	NY 716-263-6263
4	0928	GENESEO	NY 716-243-2271
5	0928	ROCHESTER	NY 716-263-6263
6	0930	ROCHESTER	NY 716-428- 1000
7	0930	GENESEO	NY 716-243-2200
8	1001	PAVILION	NY 716-584-3187
9	1004	LE ROY	NY 716-768-8210
10	1004	LE ROY	NY 716-768-8210
11	1013	ROCHESTER	NY 716-747-0282
12	1013	ROCHESTER	NY 716-747-0282
13	1017	GENESEO	NY 716-243-2271
14	1021	CALEDONIA	NY 716-538-6836

App. 309

Rochester
Telephone
ACCOUNT NUMBER:
335-5043
BILL DATE: DEC22 1993

MONTHLY SERVICE 12-22
THROUGH 01-21

LONG DISTANCE CALLS
1 1122 AVON NY
716-226-3321
2 1123 COHOCTON NY
716-384-5010
3 1123 CALEDONIA NY
716-538-6836
4 1124 CALEDONIA NY
716-538-6836
5 1130 PERRY NY
716-237-3321
6 1216ROCHESTER NY
716-263-6263
7 1216 ROCHESTER NY
716-263-6263
8 1217 ROCHESTER NY
716-272-1470

Rochester Telephone

ACCOUNT NUMBER: 335 5043

BILL DATE: JAN 22 1994

LONG DISTANCE CALLS

1 1223 ROCHESTERNY 716-263-6263
2 1225 GENESEO NY 716-243-2337
3 1228 PERRY NY 716-237-3321
4 1229 PERRY NY 716-237-3321
5 1230 PERRY NY 716-237-2231
6 1230 PERRY NY 716-237-3321
7 0105 GENESEO NY 716-243-2271
8 0105 GENESEO NY 716-243-2271
9 0113 LIVONIA NY 716-346-3780
10 0113 LEICESTER NY716-382-3221
11 0114 LIVONIA NY 716-346-3780
12 0114 GENESEO NY 716-243-4300

2/19/97

Summary

The Acombs have indicated in letters prior to their pro se lawsuit and in their pro se lawsuit that their civil rights were violated, that there was fraud by the agency and that there was discrimination. These issues were all dismissed with the lawsuit and upheld by the appeals court. After a warning sanctions were imposed in favor of the government.

All servicing was offered by the agency, now through the US Attorney. The discrimination issues in the foreclosure complaint refer to a criminal indictment. The criminal case was dropped as a result of a decision against FmHA in an ASCS civil case.

This case was handled in accordance with direction by the US Attorney's office for servicing. All discrimination issues were resolved in legal decisions.

Nancy L. Neu
Reg. Div. Dir. 5/7/97

From Nancy Neu--as per Dave Spader's instructions. Do not send the former letter, Ex. A, etc.

bsm

W.E.H (William E. Humphrey) 11-23-88

?-21-82 - Farm visit Acomb farm

Mrs. Acomb had just taken a load of hogs to market. Brent Acomb showed us through the barns. They now have inventory of over 2,400. The sows and gilts that had recently farrowed seemed to have big healthy litters and average litter size, appears 9--which is an improvement over 2 years ago.
25 boars in service. The feeder hog area has been expanded beyond the gilt sheds and they now have very large inventory of feeder hogs. Also the hog nursery facilities have been expanded into feeder hog area. The corn crop here looks excellent. Brent said that the labor force is himself, his mother, his sister, and one hired man. His sister watches the hogs all night long when they are farrowing.
Area committee was impressed that they have good inventory of healthy hogs and farrowing facilities are overflowing.
W.E.H. (William E. Humphrey)

?-21-82 - Farm visit Acomb farm

Mrs. Acomb had just taken a load of hogs to market. Brent Acomb showed us through the barns. They now have inventory of over 2,400. The sows and gilts that had recently farrowed seemed to have big healthy litters and average litter size, appears 9--which is an improvement over 2 years ago.
25 boars in service. The feeder hog area has been expanded beyond the gilt sheds and they now have very large inventory of feeder hogs. Also the hog nursery facilities have been expanded into feeder hog area. The corn crop here looks excellent. Brent said that the labor force is himself, his mother, his sister, and one hired man. His sister watches the hogs all night long when they are farrowing.
Area committee was impressed that they have good inventory of healthy hogs and farrowing facilities are overflowing.
W.E.H. (William E. Humphrey)

11-6-83 --Farm visit The entire Acomb family was on hand. Inspected and inventoried hogs this date. Joyce had good set of records on this inventory.
Feeders all ages from just born piglets to 220# on hand 2,512.
Sows and gilts on hand--288.
Average pigs weaned per sow from 1-1-83 to 9-30-83 = 8.4
The price is poor right now @$.43 base.
Joyce is working at forward contracting soybean meal.
Thinks has enough corn on hand until PIK corn becomes available.
Discussed financial situation with them including Bruce who sat in kitchen. Was impressed by the trifty trim well grown hogs being produced here. Released a hog check to purchase corn.
W.E.H. (William E. Humphrey)

10-6-83 the entire Acomb family was on hand. Inspected and inventoried hogs this date. Joyce has good set of records on this inventory.

feeders all ages from just born piglets to 220# on hand --2512
Sows & gills on hand ---------- 288

Ave. pigs weaned per sow from 1-1-83 to 9-30-8 3------- 8.4

the price is poor right now @ $.43 base.

Joyce is working at forward contracting soybean.
thinks has enough corn on hand until PlK corn becomes available.

Discussed financial situation with them including Bruce who sat in kitchen.
Released a hog check to purchase corn.

WEH

11-9-83 Del. Review

1 — analysis
2 — collect another $5O, 000.00 by end of yr.
3 — consider 84 policy loan
4—follow up letter explaining our concern, lockup significant papers, one more year.

etc.

B. Ochachey D/D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

JOYCE L. ACOMB and
CHARLES B. ACOMB,
Plaintiffs,

civ. 92 .CV6300

vs.

COMPLAINT

FARMERS HOME ADMINISTRATION:
WILLIAM E. HUMPHREY; ANDREW
T. MUSCARELLA; AND JOHN DOES,
Defendants.

Plaintiffs come forward with summons and complaint praying for damages against those above named Defendants pursuant to finding of fraud, fraudulent inducement, fraudulent concealment, detrimental reliance, conspiracy and deliberate indifference to Plaintiff's constitutional and civil rights as found herein.

PARTIES

I. Plaintiffs Joyce L. Acomb and Charles B. Acomb are United States citizens, citizens of the State of New York with an address of: Rt 1 Box 81, Dansville, NY 14437.

2 Defendant Farmers Home Administration is a creation of the United States government mandated to follow statute law as prescribed in complaint whose address is: 129 Main Street, Leicester,NewYork14481.

3. Defendant William Humphrey is sued individually and is a United States citizen, a citizen of the State of New York

with an address of: 129 Main Street, Leicester, New York 14481.

4. Defendant Andrew T. Muscarella is sued individually and is a United States citizen, a citizen of the State of New York with an address of: 129 Main Street, Leicester, New York 14481.

JURISDICTION

5. Jurisdiction is found in Title 28 U.S.C. § 1331, § 1332, § 1343; Title 42 U.S.C. § 3983, § 1985, § 1986 and § 1988; 1st, 5th, 7th and 14th Amendments of the United States Constitution; Title 15 U.S.C. §1602(c)(e)(s)(t), § 1604(a)(b)(c). § 1605(a). § 1606(a)(b)(c), § 1607 et al., § 1610(a)(b)(c)(d). § 1635(a)(b)(g) § 1638(a). 1640(a)(d) . § 1641 (a)(b)(c). § 1692et al, § 1692s(C). § 1692d et al., § 1692 et al., § 1692f et al., § 1692j, § 1692k; Title 12 U.S.C.. 1901(c)(e). § 2199, § 2200, § 2201, § 2202, 2202a, § 2202c, § 2202e. § 2219, § 2219a, § 2219c, § 2601, § 2602, § 2604, § 2607(d), § 2614; Title 7 U.S.C. § 1934, § 1970, § 1981a, § 2266a, § 2302; Farm Credit Act of 1986; Farm Credit Act of 1988.

VENUE IS PROPER IN THIS COURT

6. AS FOUND IN Jurisdiction venue for this action is proper in this Court as the Farmers Home Administration is a government agency and that individual Defendants have been charged with both constitutional and civil rights violations guaranteed by the 1st, 5th, 7th, 14th Amendments of the United States Constitution and "liberty and "property' rights secured by the Civil Rights Act of 1871, Title 42 U.S.C. § 1983, § 1985, 1986 and for which this Court is proper forum as found in § 1988 and Title 28 U.S.C.

PUBLISHER'S NOTE:

Page(s) App 319-320 missing in original.

grams available through Title 12 U.S.C. § 2001 to Sec. 2291e and in general violated fiduciary duty to Plaintiffs in assuring the most feasible way of handling a hurdle for which Plaintiffs were not at fault which left the Plaintiffs with severe irreparable damages.

12. Defendant FmHA and Defendant officials knew of various alternative programs which were available to Plaintiffs through Title 22 U.S.C.. but by deliberate indifference to Plaintiffs 'liberty" and "property" rights refused to alleviate Plaintiffs burdens and therein breached the contract between the parties and violated Plaintiffs most fundamental property rights secured by the Bill of Rights and in such violated those constitutional and civil rights heretofore described and inflicted severe irreparable damages upon Plaintiffs.

13. Defendant FmHA and Defendant officials did not give notice of any administrational hearings requested by Plaintiffs or volunteered to accept the position of Plaintiffs that payment of said note was impossible without impairing the very life and living conditions of the Plaintiff family which upon Plaintiffs request for deferral of payment was ignored and detoured to subvert the very rights secured by the statutes of Title 7 U.S.C. § 1981a and to bring about the movement within the Court to deprive these Plaintiffs of their "liberty" and "property" rights by deliberate indifference to those rights and did so violate the Civil Rights Act of 1871, Title 42 U.S.C. § 1983.14. Defendant FmHA and Defendant officials led plaintiffs to believe there would be assistance to rectify the gross injustice

of prices and there could be worked out a plan to eliminate other lenders to make repayment of both first Lien holders and of operating loans which was untrue and was fraud with intent to place Plaintiffs beyond any hope of ever paying out loan commitments which they had imposed and as such was bad faith in obtaining the contract, note, mortgage and securitylagreement, and did so violate the constitutional grantees and immunities of good faith contract secured by the 1st Amendment of the United States Constitutior$_1$ and was an invasion of "]"liberty" and "property' rights secured by the Civil Rights Act of 1871, Title 42 L.S.C. §1983 and left severe irreparable damages upon the Plaintiffs herein.

15. Defendant FmHA and Defendant officials refusing to grant administrational hearings of deferral and refusing toforward Plaintiffs requests for deferral deprived Plaintiffs of due process and equal protection of the laws pertaining to property rights secured by the 5th, 7th and 14th Amendments of the United States Constitution and violated the rights written in the 1985 and 1988 Farm Credit Acts leaving Plaintiffs with severe irreparable damages.

16. Defendant FmHA and Defendant officials did use false and misleading documents, loan papers, did make false and misrepresenting statements, pertaining to standing by their borrowers as the lender of last resort all were acts of adhesion and created adhesion contracts which were void and unenforceable but proceeded knowingly, or should have known, directly or indirectly

where acts and actions were deliberate indifference to Plaintiff constitutional guarantees and immunities and were outright invasions or Plaintiffs "liberty"" and "property" rights secured by Title 42 U.S.C. § 1983 and has left severe irreparable damages to be levied upon the Plaintiffs.

17. Defendant FmHA and Defendant officials upon the Plaintiffs in 1992 have Threatened to repossess equipment and real property without a hearing and with yet unknown Defendants. attempts to seize property of innocent parties arid sell same. or kept without release to rightful owners, which is conversion on the part of the herein named Defendants and is open fraud,. grand larceny and deprivation of personal property without due process which violated the 5th, 7th and 14th Amendments of the United States Constitution, the Constitution of the State of New York, and were invasions of "liberty" and "property' rights of the Title 42 U.S.C. Sec. 1983 and has left P]aintiffs and innocent parties with severe irreparable damages.

18. Defendant FmHA and Defendant officials were informed of the taking of private personal property of third parties but refused to adhere to ownership or rightful possession of said property which constituted theft, but worse, is unjust enrichment by intent to deprive a person of his "liberty" and "property" rights in violation of the Civil Rights Act of 1871, Title 42 U.S.C. § 1983 showing deliberate indifference to those rights and constitutes the rights of a "Bevins" action to be charged on all of the Defendants herein and has left severe irreparable damages upon Plaintiffs and innocent third parties.

19. Defendant FmHA and Defendant officials have transferred title of notes and mortgage to unknown third parties and knowingly have failed to so register such transfer of title with the County Recorder of Livingston County, State of New York in which said Defendants are unauthorized to proceed in any court to so foreclose on a mortgage of which they do not have attached original note showing fraud in the very nature in which these proceedings were conducted and of which all parties knew, or should have known, directly or indirectly, that deliberate indifference to Plaintiffs constitutional guarantees and immunities were a direct fraud upon the Court and deliberate indifference to Plaintiffs civil rights, heretofore described. inflicting severe irreparable damages upon the Plaintiffs and innocent third parties.

20. Defendant FmHA and Defendant officials knew Plaintirfs were not educated in law and further knew Plaintifrs were placed in desperate circumstances by Defendants failure to abide by law, rules and regulations, heretofore described, and as such could not defend properly their fundamental rights secured by the Bill or Rights, Constitution, and its laws, and as such were suspect to any actions which they decided were to be followed and did do just that, which created horrible traumatic mental anxiety, stress and strain and human relationships with fami]y and family members, which must be deterred which has left severe irreparable damages upon Plaintiffs and innocent third parties.

21. Defendant FmHA and Defendant officials used fear

tactics in attempting to p]ace blame of operations upon Plaintiffs which is untrue as it was the approval and created by said Defendants making these Defendants the real responsible parties for the failure of Plaintiffs to achieve repayn2ent income used as the basis for extension of credit in the first instance and as such was fraud directly upon Plaintiffs making Defendants partners in the losses, as well as profits, as it was Defendants plans which Plaintiffs were forced to follow thereby making Defendants responsible for the crisis which Plaintiffs have been forced to face and did by deliberate indifference by Defendants, of heretofore described allegations, violated the constitutional guarantees and immunities, and civil rights which has left severe irriparable damages upon Plaintiffs and innocent third parties.

22. Defendant FmHA and Defendant officials knew, there was no definite policy of adrninistrational procedure in setting of a standard for foreclosing a loan, but did know there were statute law of contract negotiations requirements, rules and regulations for closings, required hearings for restructuring of loans, established lending programs available to distressed borrowers, and the use of truthful appraisals in valuations of all property which Defendants failed to abide, by and consequently, all contracts were suspect and were as such open fraudulent documents which were void and unenforceable to which Defendants moved without conscience invading the privacy of Plaintiffs constitutional and civil rights heretofore described and left severe irreparable damages upon the Plaintiffs.

23. Defendant FmHA and Defendant officials were mandated

by Title 7 U.S.C. to insure 100 percent parity for American Farmers with all other industry and professions but failed to do so while proceeding to participate in lending programs said Secretary of Agriculture knew, or should have known, directly or indirectly, that deliberate indifference to the borrowers requirements would not be possible was, is and shall be deliberate fraud upon all Plaintiff partics and therein is open violation of good faith right of contract guarantee and immunities of the 1st Amendment, right of lawful ownership of property secured by the 5th and 14th Amendments, and legal procedures for Ihe protection of property secured by the 5th, 7th and 14th Amendments of the United States Constitution, Constitution of the State of New York referenced in Title 12 U. S. C. Sec. 1901(c)(e) with further guarantees and immunities passed by the Congress of the United States as Title 42 U.S.c. Sec. 1983 which these Plaintiffs have been openly denied as found heretofore is paragraphs 1 through 22 leaving Plaintiffs with severe irreparable damages as well as innocent third parties.

24. THAT Defendant FmHA did sell note of the Plaintiffs to unknown parties is fact as the original note was never presented at the time of sale or is registered with the Counly of Livingston, New York, making the mortgage held in the State of New York naked without a verified note making the attempt to foreclose upon said mortgage fraud and conversion, as the real party is not registered with the Recorder of Deeds for Livingston County, State of New York silent, allowing Defendant FmHA and its officials

Perpetrating fraud upon the courts of the State of New York, the Plaintiffs, is clear by the record inflicting severe irreparable damages upon the Plaintiffs.

25. Plaintiffs invoke the Enforcement Act of 1870, now the "Enforcement Clause" of the 13th. 14th and 15th Amendments of the United States Constitution where Defendant FmHA and it's agents are directly responsible for failing to protect Plaintiffs constitutional and civil rights can be sued and are without immunitv and as such knew or should have known, directly and indirectly, that deliberate indifference to Plaintiffs constitutional and civil rights were violations of those rights, and were mandated duty by "Oath" required of said Defendants to insure those rights of "any citizen" which Defendants did not do inflicting severe irreparable damages upon Plaintiffs and innocent third parties.

26. Defendant FmHA knew or should have known, directly or indirectly, Defendants FmHA and Defendant officials had used documents and misrepresentations were participating in fraud, fraud in contract, fraudulent inducements thereby making Defendant FmHA a direct party to the scheme of conspiracy without defense, and as such inflicted horrible stress, mental anxiety. duress which must be deterred forever and to insure this never exists again which has left severe irreparable damages upon Plaintiffs and innocent third parties wherein Defendants have in concert with one and all committed conspiracy in violation of Title 42U.S.C. § 1985 and § 1986.

27. Defendant FmHA has an obligation by "Oath" and

statute

law upon accepting their position as lender of last resort of Livingston County, New York to uphold the Constitution of the United States and its laws, and the laws of the State of New York wherein "liberty" and "property" rights are as integral mandate or that 'Oath" and it was mandatory said Defendant protect Plaintiffs rights which without investigation failed to do so. showing malfeasance and deliberate indifference to Plaintiffs rights, and as such did so allow severe irreparable damages to be levied upon Plaintiffs, as has been heretofore described. violating the 1st, 5th, 7th and 14th Amnendments of the United States Constitution regarding good faith contract guarantees, due process and equal protection of the laws, property rights as found in the New York State Constitution as well, while further guaranteed and secured by Plaintiffs in Title 42 U.S.C. § 1983 with right of redress for wrongs as found in § 1988.

28. Defendants Humphrey and Muscarella are admitted to be, or have been, officials of Defendant FmHA. and as such are responsible for their actions as individuals constituting a Bevins action added to the allegations found in paragraph 1 through 27, which Plaintiffs have stated heretofore, therein creating severe irreparable damages upon Plaintiffs herein and are without defense.

29. Defendants Humphrey and Muscarella knew or should have known, directly or indirectly, by their positions as officials of Defendant FmHA that deliberate indifference to rules, regulations and statutes were direct invasions of "liberty" and ' "Property"

rights of the Plaintiffs, and by failing to abide by said rules, regulations and statutes prescribed for FmHA found in the 1986and 1988 Farm Credit Acts, were violating Plaintiffs administrational rights inflicting thereby severe irreparable damages upon the Plaintiffs and innocent third parties.

30. Defendant Humphrey and Muscarella failed, refused and ignored consideration or to give disclosure of restructuring information to Plaintiffs which violated the 1986 and 1988 Farm Credit Acts, Title 12 U.S.C. Sec. 2199 to 2219c and therein were showing deliberate indifference to Plaintiffs right of contract in good faith dealing violating all constitutional and civil rights, heretofore disclosed herein, and as such created severe irreparable damages upon the Plaintiffs without cause.

31. Defendants Humphrey's and Muscarelia's failure to act in good faith is fiduciary breach of duty showing malfeasance and attempts to compound contracts all knew were of adhesion and implied in nature, adds fraudulent concealment of material facts for regulations and statutes, thereby inflicting severe irreparable damages upon Plaintiffs by those actions which are without defense.

32. Defendants Humphrey and Muscarella refused to take into consideration the position of Plaintiffs who were unable to make contractual payments without damaging the standard of living of the Plaintiffs and as such dererral should have been considered, but, was refused leaving Plaintiffs with severe irreparable damages pursuant to Title 7 U.s.c. § 1981a.

33. Defendants Humphrey and Muscarella knew, taking of

real property by threatened seizure from Plaintiffs, all Defendants knew to be fact and is withthout security by Defendant FmHA and as such is theft, embezzlement and grand larceny inflicting severe irreparable damages upon Plaintiffs and innocent third parties violating the 4th Amendment of the United States Constitution and selling same was conversion inflicting severe irreparable damages upon the Plaintiffs and innocent third parties.

34. Defendants Humphrey and Muscarella knew security instruments were false and misleading, as such documents were created by said Defendants constituting fraudulent misrepresentation of material facts inflicting severe irreparable damages upon Plaintiffs and innocent third parlies by failing to list complete and correct security and by knowing that fine print contained waivers which makes such documents void and unenforceable.

35. Defendants Humphrey and Muscarella failed to disclose waiver of constitutional and civil rights as found upon mortgages and notes which is failure to disclose material facts and adding waiving of right to defend upon default and for attorney fees of unknown amounts shows bad faith and fiduciary breach of duty, failure to abide by Federal Truth in Lending, Title 15 U.S.C. § 1601 through Sec. 1692 et al, violating good faith contract guaranteed by the 1st Amendment of the United States Constitution and mandated by the 14th Amendment as well which has inflicted severe irreparable damages upon the Plaintiffs and innocent third parties.

36. Defendants Humphrey and muscarella knew Plaintiffs were

not receiving 100% parity to all other industry, and were forced to accept increases in cost of production far in excess of ability to produce at a fair and equitable return, which is mandated by Title 7 U.S.C. therein making it impossible to meet contractual obligations which is no fault of Plaintiffs but direct fiduciary irresponsibility of Defendants and inflicted severe irreparable damages upon Plaintiffs and innocent third parties.

37. Defendants Humphrey and Muscarella made false and misrepresentations to Plaintiffs in the fact that future of agriculture was going to find higher returns which Defendants knew was untrue, and were false inducements for obtaining signatures on loan applications creating fraudulent inducements of contract and did inflict severe irreparable damages upon Plaintiffs and innocent third parties.

38. Defendants have an obligation by oath and statute law upon accepting their positions as lender of last resort of Livingston County, New York to uphold the Constitution of the United States and its laws, and the laws of the State of New York wherein, "liberty" and "property" rights of the United States citizens are the integral mandate of their "oath" and it was mandatory said Defendants protect Plaintiffs rights which without investigation failed to do, so showing malfeasance and deliberate indiffrerence to Plaintiffs rights and allowed severe irreparable damages to be inflicted upon Plaintiffs violating the 1st, 5th, 7th and 14th Amendments of the United States Constitution, the Constitution of the State of New York regarding good faith contract guarantees, due process and equal protection of the laws, property

rights Plaintiffs have secured by § 1983, Title 42 U.S.C.

39. Defendants violated detrimental reliance of contract and good faith leaving Plaintiffs without any hopes, opportunity to believe, and complete frustration as to Defendants statements showing bad faith as policy of the Defendants in their dealings and as such were contracts of fraud creations and thereby created contracts which were void and unforeseeable.

COUNT ONE

40. Plaintiffs include paragraph 1 through 39 in their entirety as if included herein.

42. Plaintiffs pray for compensatory damages in the sum of One Hundred Thousand Dollars, ($100,000.00) against each of the herein Defendants or the sum of Three Hundred Thousand Dollars ($300,000.00) for Count One.

42. Plaintiffs give notice that this same sum shall be so listed and to be added to any additional Defendant parties which shall be so joined to this litigation.

COUNT TWO

43. Plaintiffs include paragraphs 1 through 42 in their entirety as if included herein.

44. Plaintiffs pray for exemplary damages of the sum of One Hundred Thousand Dollars. ($100,000.00) against each of the herein.Defendants or the sum of Three Hundred Thousand Dollars ($300,000.00) for Count Two.

45. Plaintiffs give notice that this same sum shall be so listed and to be added to any additional Defendant parties which

shall be so joined to this litigation.

COUNT THREE

46. Plaintiffs include paragraphs 1 through 45 in their entirety as if to include herein.

47. Plaintiffs pray for punitive damages to insure and deter forever this conduct by Defendants and to insure that such actions and conduct shall he forever corrected the sum of One Million Dollars, ($1,000,000.00) against each Defendant or the sum of Three Million Dollars, ($3,000,000.00) for Count Three.

48. Plaintiffs give notice that this sum shall be so listed and to be added to any Defendant parties joined to this litigation.

REQUEST FOR ATTORNEY FEES

49. Plaintiffs requests granting of attorney fees as is found guaranteed in Title 42 U.S.C. § 1988 and other jurisdiction as found under the jurisdiction section of Complaint.

50. PLAINTIFFS DEMAND JURY TRIAL

THEREFORE Plaintiffs pray for judgment; the sum of Three Million Six Hundred Thousand Dollars. ($3,600,000.00) against all Defendants herein.

Dated this 13 day of July, 1992.

Respectfully submitted,

Joyce L. Acomb
Rt. 1, Box 81
Dansville, NY 14437

Charles B. Acornb
Rt. 1, Box 81
Dansville, NY 14437